

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
Request for Review of a Decision of the)	
Universal Service Administrator by)	
)	
Lake Elsinore Unified School District,)	
Lake Elsinore, California)	

Request for Review

Gregory J. Bowers
Assistant Superintendent, Facilities &
Operations Division
Lake Elsinore Unified School District
545 Chaney Street
Lake Elsinore, California 92530

August 29, 2011

Summary

In this Request for Review, the Lake Elsinore Unified School District (“LEUSD”) calls on the Commission to put an end to a startling example, over two years in the making, of waste and abuse of public resources by auditors working on behalf of Universal Service Administrative Company (“USAC”) and the Federal Communications Commission (“FCC”), and through the failure of proper oversight and management by USAC and the Office of the FCC Inspector General. The tale begins with the improper exercise of authority, in violation of the Inspector General Act of 1978, as amended, of the Commission’s Inspector General over the program operating responsibilities of the Commission, as delegated to USAC. It continues through the July 1, 2011 Decisions of the USAC Schools and Libraries Division (“SLD”) denying LEUSD’s appeals of four ill-conceived, unjustified, and *ultra vires* Commitment Adjustments (“COMADs”). Along the way, LEUSD has been subjected to a relentless barrage of legal and factual errors, non-sequiturs, and shifting theories, more worthy of Kafka than of federal government representatives who are pledged to assist beneficiaries of the federal schools and libraries Universal Service Support (“E-Rate”) mechanism.

Together, the COMADs at issue in this appeal rescinded in their entirety SLD’s funding commitments totalling \$828,379.13 for four LEUSD funding requests (“FRNs”), two from Funding Year 2006 and two from Funding Year 2007. SLD issued the COMADs in excess of its authority based on the results of an audit that, upon careful examination, identified no violations of federal or state laws or regulations governing E-Rate compliance. USAC’s auditors improperly conflated procurement rules applicable to federal grant programs with the Commission’s E-Rate requirements, despite corrective

instructions from USAC staff. Thereafter, ignoring its explicit commitment to do so, USAC staff conducted no outreach or further investigation of the matters raised in the audit, afforded LEUSD no opportunity to correct the auditor's errors, and disregarded the formal legal opinion offered by LEUSD's outside counsel affirming LEUSD's compliance with E-Rate requirements.

It is axiomatic that the adjudicatory authority of the Commission extends only to violations of the Communications Act of 1934, as amended. The Commission and USAC, therefore, lack authority to adjudicate purported violations of state and local law. The COMADs must fail on this basis alone. The COMADs cite no violation of the Communications Act or, for that matter, any other federal statute, a necessary prerequisite under the Commission's grant of COMAD authority to USAC.

In this case, however, and contrary to SLD's assertions, a careful reading of the record reveals no finding that LEUSD violated any legal requirement – federal, state or local – bearing on the E-Rate Program. As a result, the Commission should vacate the COMADs at issue here and order SLD to reinstate its previously committed funding for the affected Priority One services.

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Request for Review of Lake Elsinore Unified School District

Lake Elsinore Unified School District (“LEUSD”) hereby requests that the Commission review and reverse two Decisions of the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”) dated July 1, 2011 (the “Decisions”).¹ This Request for Review supplements LEUSD’s Request to Postpone Action on Demand Payment Letters, dated July 14, 2011, also filed in the above-captioned docket.

The Decisions improperly denied LEUSD’s appeal² of two Commitment Adjustments (“COMADs”).³ The COMADs improperly rescinded \$828,379.13 in E-Rate support spanning two funding years and originally committed under four Funding Request Numbers (1423335 and 1423456 from Funding Year 2006; and 1563982 and 1564329 from Funding Year 2007), based on the SLD’s finding that LEUSD had not complied with all Commission, state and local requirements applicable to the federal

¹ See **Exhibit A**, hereto.

² See **Exhibit B**, hereto.

³ See **Exhibit C**, hereto.

schools and libraries universal service support (“E-Rate”) mechanism. Not only did the COMADs fail to state any specific violations on which they were based, but the underlying audit contained no findings of any such violations. Further SLD based its Decisions denying LEUSD’s appeal, not on any alleged violation of E-Rate rules, but on LEUSD’s purported failure to respond to SLD’s request for information that was both irrelevant to the issues at hand and apparent on the face of the existing record. As such, the Commission should overturn the COMADs and direct SLD to reinstate its funding commitment for the FRNs to which they relate.

Background

Section 10299 of the California Public Contract Code explicitly authorizes the California Department of General Services to “consolidate the needs of multiple state agencies for information technology goods and services, and . . . establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power.”⁴ Because the state follows a competitive process to establish such state master contracts, Section 10299 also states that, “school districts may, without further competitive bidding, utilize contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department for use by school districts for the acquisition of information technology, goods, and services.”⁵ In previous years, LEUSD received telecommunications services and Internet access under the CALNET 1 state master contract executed in 1998 pursuant

⁴ Cal. Pub. Contr. Code § 20999(a).

⁵ *Id.*, § 20999(b).

to Section 10299 among Pacific Bell, MCI Telecommunications Corporation, and the State of California Department of General Services.

Recognizing that, notwithstanding the authority of Section 10299, the Commission's Part 54 rules require LEUSD to comply with a set of specific federal competitive bidding requirements in connection with services eligible for support from E-Rate, on January 6, 2006, LEUSD posted a Form 470 (No. 267580000562484, the "FY 2006 Form 470") to the USAC web site, indicating that it was seeking, among other things, telecommunications services and Internet access for FY 2006. The FY 2006 Form 470 indicated that LEUSD was seeking these services on either a tariffed or contract basis, potentially including a multi-year contract or one featuring voluntary extensions. The FY 2006 Form 470 indicated that LEUSD would publish an RFP containing more detail on its web site, and provided the Internet URL where the RFP could be found on the Form 470 and LEUSD web site. The RFP identified the evaluation factors to be used in making the award, specifically listing "[o]verall cost of the vendor's proposal" as the first "primary consideration" LEUSD would use to evaluate the submitted proposals.⁶

LEUSD received two bids in response to the RFP and FY 2006 Form 470, from AT&T and Verizon, respectively. The AT&T bid reiterated the rates, terms, and conditions offered in the CALNET 1 state master contract. LEUSD received the Verizon bid on February 13, 2006, some ten days late based on the February 3, 2006 deadline specified in the FY 2006 RFP, which coincided with the FY 2006 Form 470 allowable contract date. Section I of the RFP specifically stated that, "[p]roposals must be received

⁶ See FY 2006 RFP, Section III (provided as **Exhibit D**, hereto).

by 4:00 PM local time (PST) on **Friday, February 3, 2006** by email” to the electronic address provided.⁷ Because the Verizon bid was received late and, therefore, deemed untimely under the terms of the RFP, LEUSD did not consider it. As a result, in accordance with state law and the Commission’s rules, on February 7, 2006, pursuant to the requirements of the Commission’s *Kalamazoo Order*,⁸ LEUSD memorialized its decision to retain its existing CALNET 1 services. In its FY 2006 Form 471 filing (No. 513324), LEUSD specified the FY 2006 Form 470 and provided February 7, 2006 as the contract award date.

Similarly, for Funding Year 2007, LEUSD posted a Form 470 (No. 308430000607684, the “FY 2007 Form 470”) to the USAC web site on December 19, 2006, indicating that it was seeking, among other things, telecommunications services and Internet access for FY 2007. The FY 2007 Form 470 indicated that LEUSD was seeking these services on either a tariffed or contract basis, potentially including a multi-year contract or one featuring voluntary extensions. The FY 2007 Form 470 indicated that LEUSD would publish an RFP containing more detail on its web site, and provided the Internet URL where the 2007 RFP could be found on the LEUSD web site. That RFP again identified the evaluation factors to be used in making the award, specifically listing “[o]verall cost of the vendor’s proposal” as the first “primary consideration” LEUSD would use to evaluate the submitted proposals.⁹

⁷ See FY 2006 RFP, Section I (emphasis in original).

⁸ *Request for Review of the Decision of the Universal Service Administrator by Kalamazoo Public Schools, Kalamazoo, Michigan*, CC Docket No. 96-45, Order on Reconsideration, DA 02-2975 (Wir. Comp. Bur. 2002), at ¶¶ 6-7 (“*Kalamazoo Order*”).

⁹ See FY 2007 RFP, Section III (provided as **Exhibit E**, hereto).

LEUSD received no bids in response to the 2007 Form 470 and RFP. As a result, on January 17, 2007, following the passage of the RFP response deadline and the FY 2007 Form 470 allowable contract date, LEUSD again memorialized its decision to retain its existing CALNET 1 services. In its FY 2007 Form 471 filing, it cited the FY 2007 Form 470 and provided January 17, 2007 as the contract award date.

Two years later, LEUSD received a letter dated January 13, 2009 from the firm, Thompson, Cobb, Bazilio & Associates, PC (“TCBA”), indicating that USAC’s Internal Audit Division had retained TCBA to conduct an attestation audit of LEUSD’s “compliance with applicable requirements of 47 C.F.R. Sections 54.500 through 54.523 . . . and related FCC Orders.”¹⁰ The letter enclosed an announcement from the Commission’s former Inspector General Kent Nilsson indicating that the audit was being conducted under the oversight of his office and stating that, “schools and libraries are required to maintain records and documents that demonstrate compliance with the FCC’s rules and orders.”¹¹ As a further attachment, a letter from the USAC Internal Audit Division also indicated that the audit would be conducted “under the direction of the [FCC] Office of Inspector General (OIG) principally to assess compliance with FCC Rules.”¹²

¹⁰ Letter from Martin M. Ferber, Principal, Thompson, Cobb, Bazilio & Associates, to Frank W. Passarella, Superintendent, LEUSD (Jan. 13, 2009), at 1 (provided as **Exhibit F**, hereto).

¹¹ Letter from Kent R. Nilsson, Inspector General (Nov. 5, 2008), at 1 (Attachment D to **Exhibit F**, hereto).

¹² Letter from Wayne M. Scott, Vice President, Internal Audit Division, USAC (Nov. 14, 2008), at 1 (Attachment E to **Exhibit F**, hereto).

At the time of these procurements, LEUSD had two policies put in place by the Board of Education governing aspects of the procurement process. Board Policy 3300, “Expenditures and Purchases,” required “effective purchasing procedures that are consistent with sound financial controls and that ensure the district receives maximum value for items purchased.”¹³ Board Policy 3311, “Soliciting Prices (Bids and Quotations),” stated that, “the Board may piggyback onto the contract of another public agency of corporation to lease or purchase equipment or supplies to the extent authorized by law.”¹⁴

During the audit, it became clear that the TCBA auditors had limited understanding of the permitted scope of the audit or the requirements of the Commission’s E-Rate rules and orders against which they were to test LEUSD’s compliance. During the field work conducted in February 2009, the auditors quickly focused on LEUSD’s purchasing procedures and, in particular, the fact that LEUSD did not, at the time, have in place written procurement policies beyond those contained in Board Policies 3300 and 3311. In its April 6, 2009 draft audit report, TCBA proposed a finding that the lack of a more detailed written procurement policy violated E-Rate rules, citing the Best Practices Procurement Manual promulgated for the Federal Transit Administration. During the audit field work, members of the TCBA audit team advised LEUSD that several TCBA auditors were retired federal auditors that had extensive experience related to federal contracts and grants, for which there are specific procurement requirements established by the Office of Management and Budget

¹³ See Independent Accountant’s Report, SL-2008-337 (May 12, 2009) (“Audit Report”), Att. 2, at 4 (provided as **Exhibit G**, hereto).

¹⁴ See Audit Report, Att. 2, at 8.

(“OMB”), including a requirement to have written procurement procedures. These OMB requirements do not apply to E-Rate.

After LEUSD brought to USAC’s attention that TCBA had proposed an audit finding based, not on any violation of the Commission’s E-Rate rules and orders, but on a best practices manual applicable to a different federal agency altogether, USAC cautioned that “‘best practices’ should not be stated as criteria for audit findings.”¹⁵

In response, TCBA revised its draft report to characterize LEUSD’s purported failure as *Issue* SL2008BE337_02, “District Did Not Comply with All State and Local Procurement Policies,” continuing to refer to Federal Transit Administration Best Practices.¹⁶ LEUSD responded to this issue, pointing out that (1) purchases under state master contracts are exempt from the additional competitive bidding requirements of Section 20111 of the California Public Contract Code; (2) Section 20111 does not apply to the purchase of utility services in any event; (3) LEUSD has written procurement policies, in the form of Board Policies 3300 and 3311 and, in any event, California law does not require written procurement policies; and (4) the Director of Information Technology is qualified to procure telecommunications services on behalf of LEUSD.

When TCBA released its final Audit Report, dated May 12, 2009, it had perplexingly re-converted this issue back into a material finding that, “District Did Not Comply with All State and Local Procurement Policies.”¹⁷ The sole federal legal criterion against which TCBA purported to test LEUSD’s assertion of compliance was

¹⁵ See Email from Wayne Scott, USAC, to Kim Friends, CSM Consulting, Inc. (April 19, 2009) (provided as **Exhibit H**, hereto).

¹⁶ See LEUSD Draft Issues (provided as **Exhibit I**, hereto), at 3.

¹⁷ See Audit Report, Att. 2, Finding No. SL2008BE337_F01.

Section 54.504(a) of the Commission's rules, 47 C.F.R. § 54.504(a), as it was then in effect.¹⁸ TCBA observed that Section 54.504(a) "requires that eligible schools seek competitive bids and states that state and local competitive bid requirements apply for all eligible services."¹⁹ In support of its finding of a violation, however, TCBA cited the following conditions surrounding LEUSD's procurement of telecommunications services and Internet access associated with the four FRNs at issue, none of which violate California state or local requirements:

- [LEUSD]'s procurement of telecommunications services and Internet access, including receiving bids and selecting the service providers, was carried out solely by the Director of Information Technology (IT) Services, who also played a lead role in developing and implementing the District's Technology Plan and is responsible for managing the District's technology resources and supporting its technology users.
- The Director of IT carried out the procurement process without a written procurement manual or other document describing procurement policies and procedures to be followed.
- Requests for Proposals (RFP) were posted on the District web site.²⁰

While dropping the inapt reference to Federal Transit Administration best practices, TCBA failed to explain how any of these conditions violated Section 54.504(a) or, indeed, how they violated California state or local law. The Audit Report also purports to test LEUSD's assertion of compliance against two inapplicable non-federal criteria, namely Section 20112 of the California Public Contract Code and Board Policy

¹⁸ In rule revisions that took effect on January 3, 2011, the Commission relocated this language to 47 C.F.R. § 54.503(b). All references to the Commission's Part 54 rules in this Request for Review will be to the earlier version of the rules as they were in effect during the time period of the events in question).

¹⁹ See Audit Report, Att. 2, Finding No. SL2008BE337_F01.

²⁰ *Id.*

3300. The auditors apparently overlooked the fact that, because LEUSD was purchasing services from the CALNET 1 state master contract, Sections 20111 and 20112 of the California Public Contract Code were inapplicable. In addition, the Audit Report explicitly acknowledged that LEUSD had written procurement materials in place.²¹

The Audit Report also stated that, except with respect to that single finding, *i.e.*, the purported failure to comply with all state and local procurement policies, LEUSD had “complied with the aforementioned requirements [of the 47 C.F.R. Part 54 rules and related orders under examination] relative to disbursements of \$455,067.33 from the Universal Service Fund during the fiscal year ended June 30, 2008, for telecommunications services and Internet access and relative to its application and service provider selection processes for Funding Years 2006 and 2007.”²² In other words, the Audit Report found that LEUSD complied with all Commission competitive bid rules.

The Audit Report also included USAC’s Management Response to this finding, which stated in its entirety that, “USAC will reach out to the Beneficiary, affording it the opportunity to substantiate its claim that it complied with state procurement requirements. USAC will then review the information provided to determine if recovery is warranted. USAC management concurs with the finding and recommendation.”²³

USAC’s apparent “outreach” took place more than a year later, when LEUSD received a letter dated September 9, 2010, from the SLD indicating that the USAC

²¹ Audit Report, Att. 2, at 10-11.

²² Audit Report at 2.

²³ USAC Management Response, attached to Audit Report.

Program Compliance team was then in the process of reviewing the Audit Report. Despite the Audit Report's conclusion that LEUSD had complied in all other respects with the Commission's competitive bid requirements it tested, the USAC letter stated that, during the audit, LEUSD was "unable to provide evidence that price was the primary factor in the vendor selection process" for the FRNs at issue.²⁴ Implicitly acknowledging that USAC was raising this new issue for the first time, the letter went on to request detailed information on the number of bid responses LEUSD had received in response to the FY 2006 and FY 2007 RFPs, as well as "documentation created during the bidding process that indicated how and why [LEUSD] selected the vendor."²⁵ Finally the letter stated that, "USAC may rescind your funding commitment . . . because price of eligible products and services was not the primary factor for vendor selection."²⁶

One week later, in a follow-up letter dated September 16, 2010, which purported to remind LEUSD of the approaching due date for response, USAC again changed its theory, stating "FCC rules require that the applicant submits a 'bona fide' request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, and a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury."²⁷ The letter went on to reiterate the request for

²⁴ See Letter from Robert Herring, Program Compliance, USAC, to Cathy Benham (Sept. 9, 2010) (provided as **Exhibit J**, hereto), at 1.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See Letter from Robert Herring, Program Compliance, USAC, to Cathy Benham, Director, E-Rate Services, CSM Consulting (Sept. 9, 2010) (provided as **Exhibit K**, hereto).

information on bid responses and vendor selection and stated that the “funding commitment may be rescinded . . . because the applicant failed to competitively bid in accordance with the information and/or certifications provided on the Form 470.”²⁸

LEUSD responded on September 22, 2010 with the same information that it made available to USAC and the auditors one year earlier, *i.e.*, that in response to the FY 2006 RFP, it had received one timely bid from AT&T and its affiliates, which reflected the CALNET 1 rates, terms, and conditions of service, and one untimely bid from Verizon, received after the closing date of the RFP, after the allowable contract date on the FY 2006 Form 470, and after the vendor selection process was complete. In addition, LEUSD responded that it had received no responses whatsoever to the FY 2007 RFP. With respect to the vendor selection process, LEUSD explained that, in each case, “[v]endor selection was based upon the lowest price, responsible bid.”²⁹ In FY 2006, LEUSD had received only one bid to evaluate, which reiterated the terms of its existing contract, while in FY 2007, it received no responses at all. In each case, it had evaluated its options in accordance with the strictures of the *Kalamazoo Order* to memorialize its decision to retain its existing CALNET 1 service. In both cases, LEUSD was in full compliance with state law.

Finally, in response to USAC’s inexplicable query why LEUSD had chosen not to re-solicit competitive sealed bids, LEUSD explained that it was already receiving the “best possible rates” and the most competitive available because it was receiving service under the CALNET 1 contract “used by approximately 75% of state agencies in

²⁸ *Id.*

²⁹ See Email from Cathy Benham to Robert Herring (Sept. 22, 2010) (provided as **Exhibit L**, hereto).

California.” Given the purchasing power of the State of California, LEUSD explained that it was improbable that another vendor would offer more competitive rates than those contained in CALNET 1.

In apparent disregard of the Audit Report findings and LEUSD’s multiple responses, on February 15, 2011, SLD improperly issued four COMADs revoking the funding commitments for the four FRNs at issue in their entirety. In support of the COMADs, SLD made the following statements:³⁰

- “On your FY 2006³¹ FCC Form 470 you certified that you reviewed and complied with all FCC, state, and local procurement/competitive bidding requirements.”
- “During the course of an audit it was determined that you failed to comply with all FCC, state, and local procurement/competitive bidding requirements-Lake Elsinore Unified School District procurement of telecommunications services and Internet access, including receiving bids and selecting the service providers, was carried out without a written procurement manual or other document describing procurement policies and procedures to be followed and you have not substantiated the claim that you have complied with state procurement requirements.” [*sic*]
- “The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury.” [*sic*]
- “Since you failed to comply with local and state procurement laws and you violated the competitive bidding process.” [*sic*]
- “Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.”

³⁰ See **Exhibit C**.

³¹ The two COMADs relating to the FY 2007 FRNs also include this statement, despite any apparent lack of relevance to those matters.

In response to this collection of factual misstatements, sentence fragments, conclusory assertions, and unsupported findings, LEUSD contacted the USAC Ombudsman to seek assistance. The Ombudsman responded that the COMAD team “followed the proper procedures for processing Audit recommendations,” without explaining what those procedures might be.³² The Ombudsman also volunteered that:

The FCC rule regarding a ‘written procurement manual’ is reference to the requirement to follow all FCC, state, and local procurement/competitive bidding requirements. (see 47 CFR 54.504.) Your appeal should include an opinion from the California State’s Attorney that the school complied with all state and local procurement/competitive bidding requirements, citing all issued covered in the audit letter.”³³

On April 12, 2011, LEUSD filed its appeal, addressing the issues raised in the COMAD and providing a formal legal opinion from its outside legal counsel, located and licensed in California and an expert in the requirements of the California Public Contract Code. The Opinion states that:

After review of 47 CFR Part 54 Rules and Related Orders, the applicable and available methods of procurement and the actual process followed by the District, we disagree with [the Audit Firm] conclusion and assert that the District did fully comply with state and local procurement requirements through utilization of a CALNET contract, a valid, established and widely used and accepted method of procurement.³⁴

By its own terms, this assertion broadly encompasses all aspects of California law governing public procurement by LEUSD.

³² See Email from David LeNard, USAC, to Cathy Benham (provided as **Exhibit M**, hereto).

³³ *Id.*

³⁴ See Opinion of Atkinson, Andelson, Loya, Ruud & Romo, April 12, 2011 (attached to LEUSD COMAD Appeal, provided as **Exhibit B**, hereto).

Confronted with this sweeping rebuttal of the COMAD, SLD remained undeterred. It responded on June 9, 2011, with a further letter asking LEUSD to provide “information necessary to process your appeal,” specifically “documentation showing that the Form 470 and RFPs for services requested in” each of FY 2006 and FY 2007 “were posted on the District’s website or some other publication of general circulation published by the District.”³⁵ The request required a response in 15 days, despite the fact that the Audit Report had made an explicit finding more than two years earlier, based on extensive field work, that “Requests for Proposals (RFP) were posted on the District website.”³⁶

On June 20, 2011, J.R. Rea, the LEUSD Director of IT, also asked USAC to make the LEUSD E-Rate Consultant, Cathy Benham, the primary E-Rate point-of-contact person for LEUSD, replacing himself.³⁷ SLD refused, stating that the LEUSD Superintendent of Schools would need to make any such request. Once the Superintendent did so,³⁸ on June 22, 2011, Ms. Benham sought assistance from the State E-Rate Coordinator because LEUSD was at a loss to understand the need for a further response, or indeed how such information could be relevant.³⁹ Ms. Benham also sent a request on June 23, 2011 asking SLD to place its review on hold to accommodate the

³⁵ See Facsimile Transmission from Tim Curtin, Program Compliance, USAC, to J.R. Rea, LEUSD (June 9, 2011) (provided as **Exhibit N**, hereto).

³⁶ Audit Report, Att. 2.

³⁷ See Emails from J.R. Rea to Tim Curtin, USAC (June 20, 2011) (provided as **Exhibit O**, hereto).

³⁸ See Emails from Dr. Frank W. Passarella, District Superintendent of Schools, LEUSD, to Tim Curtin, USAC (June 22, 2010) (provided as **Exhibit P**, hereto).

³⁹ See Email from Cathy Benham to Russ Selken and John Vardanega (June 22, 2010) (provided as **Exhibit Q**, hereto).

involvement of the State E-Rate Coordinator.⁴⁰ SLD did not respond to this request. On July 1, 2011, before the State E-Rate Coordinator could have any meaningful involvement, SLD issued the Decisions denying LEUSD's appeal because, "as the information requested was not forthcoming, USAC was unable to determine if your funding request was in compliance with Program Rules."⁴¹

This Request for Review ensued.

⁴⁰ See Email from Cathy Benham to Tim Curtin, USAC (June 23, 2010) (provided as **Exhibit R**, hereto).

⁴¹ Decisions at 2 (provided as **Exhibit A**, hereto).

Discussion

Simply put, none of the shifting theories, bald conclusory assertions, or factual errors advanced by TCBA or SLD over the past two years against LEUSD state a violation of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.* (the “Communications Act”), any Commission rule, or, for that matter, any California state or local procurement requirement. Therefore, for the following reasons, the Commission should reverse the Decisions and direct SLD to restore funding for the affected funding requests.

A. The Commission and USAC Lack Authority to Issue or Enforce the COMADs under Review in this Case

At bottom, each of the four COMADs at issue in this Request for Review stems from the original TCBA audit finding that LEUSD had, in some unspecified way, failed to comply with California state or local procurement policies. As LEUSD will demonstrate below, it has carefully observed all such requirements. But, that fact is largely beside the point in this Request for Review, because the Commission and USAC lack the authority to adjudicate matters of state procurement law. Further, the Commission lacks authority, even if such violations are proven, to issue a COMAD on that basis or seek recovery of previously disbursed E-Rate support.

1. The Commission and USAC Lack Statutory Authority to Adjudicate Violations of State and Local Procurement Laws, and Should Not Do So in Any Event

SLD’s decision to issue the COMADs based on the TCBA audit finding that LEUSD had not complied with state and local procurement policies violates the strictures of the Communications Act and a substantial body of Commission precedent.

First, the Commission’s enforcement authority is necessarily limited to violations of the Communications Act and its own implementing rules and orders. The Commission is a federal administrative agency with limited jurisdiction bestowed by its enabling statute, the Communications Act. For example, Section 208 provides the Commission with authority to hear complaints “of anything done or omitted to be done by any common carrier subject to this Act, *in contravention thereof*.”⁴² Section 403 affords the Commission the power to institute an inquiry:

in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any of the provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter.⁴³

Sections 501 and 502 provide for criminal penalties to be imposed on any person who “willfully and knowingly” violates the requirements of the Communications Act or the Commission’s implementing rules and regulations, respectively.⁴⁴

No provision of the Communications Act grants the Commission the power to investigate or enforce the compliance of school districts with state or local procurement laws. Adjudication of private contractual disputes and the enforcement of state procurement and competitive bidding laws are plainly outside of the Commission’s statutory jurisdictional mandate. SLD’s authority, which derives from that of the Commission, is similarly limited, as the Commission plainly cannot grant to SLD jurisdiction that it itself lacks.

⁴² 47 U.S.C. § 208 (emphasis added).

⁴³ 47 U.S.C. § 403.

⁴⁴ 47 U.S.C. §§ 501-502.

Second, it is clear that violations of state and local procurement laws do not simultaneously violate any provision of the Communications Act. Section 254(h)(1)(B) of the Communications Act, which authorizes the E-Rate program, requires only that telecommunications carriers “provide . . . services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties.”⁴⁵ While Section 254(h)(2), governing the provision of advanced telecommunications and information services to schools and libraries, requires “competitively neutral” rules, it does not establish a federal mandate that beneficiaries adhere to state and local procurement laws.

Similarly, in creating the E-Rate Program, the Commission made clear that, while it would not preempt existing state and local procurement laws, nor would violation of such laws constitute a violation of the FCC’s rules governing the E-Rate program. Section 54.504(a) of the Commission’s rules states, in relevant part, that the Part 54 federal competitive bid requirements – chiefly that each applicant must (i) post FCC Form 470 through USAC’s electronic portal; (ii) carefully consider all bids received using price as the primary evaluation factor; and (iii) select the most cost effective service offering only after the expiration of the required 28-day waiting period – “apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.”⁴⁶

Section 54.504(a), therefore, does *not* create a federal obligation for applicants to follow state and local procurement laws. Rather, in adopting this rule, the

⁴⁵ 47 U.S.C. § 254(h)(1)(B).

⁴⁶ 47 C.F.R. § 54.504(a).

Commission made clear its intent merely to preserve existing state and local obligations to comply with those laws, and *not* to import the substance of these various requirements into the Commission's Part 54 rules. As the Commission then explained, "Commission action is not required because many individual schools and libraries operate under state and local procurement rules designed to achieve those objectives. Thus, although we do not impose bidding requirements, neither do we exempt eligible schools or libraries from compliance with any state or local procurement rules, such as competitive bidding specifications, with which they must *otherwise* comply."⁴⁷

LEUSD followed this directive precisely. It exercised the authority to purchase services from a state master contract granted by Section 10299 of the California Public Contract Code, which was not in conflict with the Commission's federal competitive bid rules, with which it also complied.

Recently, the Commission has reiterated its acknowledgement of the responsibility of state and local authorities to enforce state and local procurement laws. In proposing to eliminate the Form 470 filing requirement and 28-day waiting period for Priority One services, the Commission stated, "public schools and libraries are held accountable by state and local authorities for violating state and local procurement

⁴⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd. 8776, ¶ 482 (1997) (emphasis added) (subsequent history omitted). In all four COMADS, including those relating to FY 2007, SLD also stated that, "[o]n your FY 2006 FCC Form 470 you certified that you reviewed and complied with all FCC, state, and local procurement/competitive bidding requirements." To the extent that SLD treated this statement as an independent basis for issuing the COMADS, such action is plainly impermissible. To permit SLD to use this certification as authority to conduct its own investigations and make its own findings with regard to an applicant's compliance with state and local procurement requirements would admit through the back door the very obligations that the Commission has barred from the front.

regulations.”⁴⁸ Similarly, in the *Ysleta Order*, the Commission confirmed that bare compliance with state and local procurement laws, without more, would not necessarily result in compliance with the federal competitive bidding rules imposed by the Commission, to the extent that the federal requirements were more stringent.⁴⁹

Indeed, the TCBA Audit Report correctly acknowledged that, “Section 54.504(a) states that state and local competitive bid requirements apply for all eligible services.”⁵⁰ What TCBA and the SLD failed to grasp, however, is that Section 54.504(a) merely preserves existing state and local authority to create and enforce those requirements. It does not itself sweep the full nationwide panoply of state and local procurement laws, rules, and other requirements into the Code of Federal Regulations.

Third, even if the Commission were to somehow find within the Communications Act the statutory authority to enforce state and local procurement laws, regulations, and policies, it would mark a dramatic departure from decades of Commission precedent for it to do so. Rather, the Commission should continue to adhere to its longstanding policies permitting determination of these matters to take place before the state and local authorities charged with that responsibility.

⁴⁸ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, FCC 10-83, 25 FCC Rcd. 6872, 6882 (2010).

⁴⁹ *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas*, CC Docket NO. 96-45, Order, FCC 03-313, 18 FCC Rcd 26406, ¶ 42 (2003) (“*Ysleta Order*”) (“Even if we assume that Ysleta’s selection of IBM did not violate applicable state and local procurement law, such compliance would not automatically ensure compliance with our rules governing the selection of bidders in the E-rate program.”).

⁵⁰ Audit Report, Att 2.

For decades, the Commission has wisely chosen not to arrogate to itself responsibility to decide matters outside of its area of jurisdiction and expertise arising under state and local law.⁵¹ Recognizing the practical and legal limitations on its ability to resolve private disputes and other matters arising under state law, the Commission has routinely refused to “interject itself into private matters, finding that a court, and not the Commission, is the proper forum to resolve such disputes.”⁵² Rather, the Commission generally adopts a “wait and see” posture with respect to ongoing litigation in the state courts.⁵³ Indeed, specifically in the context of operational SPIN changes, the Commission has refused to involve either itself or USAC in disputes where the original service provider challenges the billed entity’s legal justification for terminating a contract with that provider, holding instead that, “in light of the Commission’s longstanding policy of refusing to adjudicate private contract law questions for which a forum exists in the state courts, a state court and not the Commission is the appropriate forum for rendering such a determination.”⁵⁴ Based on this policy, “the Commission has traditionally refrained from acting or deferred action in matters of alleged violations of

⁵¹ See, e.g., *Listeners’ Guild v. FCC*, 813 F.2d 465 (D.C. Cir. 1987).

⁵² *Nextel Communications, Inc. and Sprint Corp.*, WT Docket No. 05-63, Order, FCC 05-148, 20 FCC Rcd 13967, at ¶ 181 and n.428 (2008).

⁵³ *Listeners’ Guild*, 813 F.2d 465.

⁵⁴ *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, FCC 00-100, 15 FCC Rcd 5498 (2000), at n.23.

local or state laws where the matters have not been presented to or acted upon by the authority charged with the responsibility of interpreting and enforcing those laws.”⁵⁵

The Commission should continue to adhere to its historical practice. Neither the Commission nor USAC have the resources necessary to become expert in all of the state and local laws, regulations, and policies governing public procurement across each state and territory, and there is no need for either of them to do so. State and local governments have created an extensive set of courts, legislatures, executive, and administrative authorities charged with establishing and enforcing these requirements. The Commission should trust these authorities to operate properly and to ensure compliance, just as the state and local legislators who create the requirements do. To act otherwise would encourage disappointed bidders to take their complaints to USAC or the Commission, not to the local authorities charged with interpreting and enforcing state and local procurement laws, either in order to gain extra leverage in connection with a bid protest, or based on “forum shopping” considerations as they seek a receptive audience for their complaints.

When USAC and the Commission render decisions on such matters, they also create a potentially dangerous body of “federal common law” interpreting state and local procurement and competitive bidding requirements. These decisions may, over time, diverge from the interpretations given to these requirements by the state and local authorities charged with interpreting and enforcing them. In this case, as discussed below, LEUSD’s actions were proper based on the clear requirements of California law.

⁵⁵ *Schools and Libraries Support Mechanism, Requests for Review of the Decision of the Universal Service Administrator by Bienville Parish School Board, Arcadia, Louisiana, et. al*, CC Docket No. 02-6, FCC 06-287, 21 FCC Rcd 1234 (Wir. Comp. Bur. 2006), at ¶ 6.

If the Commission were to uphold the finding of TCBA and the SLD that more was required to comply with California procurement policies, it would risk creating federal interpretations of California law that California state authorities do not recognize. E-Rate beneficiaries and service providers alike would then be caught between conflicting federal and state interpretations of the same statute. Disappointed bidders would be encouraged to “forum shop” their procurement complaints, bringing them before the FCC and USAC when they would plainly lack merit in the California courts. It was precisely these considerations that led the Supreme Court, in the seminal 1938 case of *Erie Railroad Co. v. Tompkins*, to overrule nearly a century of precedent, declaring:

There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State, whether they be local in their nature or “general,” be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.⁵⁶

The Supreme Court thus held that federal courts, when applying state law in cases of diversity jurisdiction, must apply the common law of the state, and not a body of “federal common law” established in the federal courts.

In departing from the Commission’s historical deference to the expertise and jurisdiction of state and local legislative, executive, judicial and administrative authorities, therefore, SLD has overstepped the boundaries of the Commission’s jurisdiction and set a precedent that threatens quickly to overwhelm the limited resources of USAC, the Commission, and untold numbers of school districts.

⁵⁶ *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, 78 (1938) (overruling *Swift v. Tyson*, 41 U.S. (16 Pet.) 1 (1842)).

2. In the Absence of a Violation of the Communications Act, the Commission and USAC Lack Authority to Seek Recovery of Previously-Disbursed Support

In the absence of any violation of the Communications Act, USAC lacks authority to rescind support or otherwise sanction an E-Rate beneficiary. On this basis alone, the Commission must direct SLD to rescind its COMADs and reinstate funding for LEUSD's FRNs at issue here.

In recognition of the limits of its statutory authority, the Commission has given USAC the authority to issue COMADs and seek recovery of support payments disbursed in error only in cases where such disbursement violates a provision of a federal statute.⁵⁷ The Commission did *not* grant USAC the power to issue COMADs where its disbursement violates only a Commission rule, regulation, or order. Indeed, the two examples that the Commission provided in the *COMAD Order* – disbursement of support for ineligible services or to an ineligible provider – would explicitly violate Sections 254(h)(1)(B) and 254(h)(2)(A) of the Communications Act.⁵⁸

In issuing this directive, the Commission drew guidance from the Appropriations Clause of the U.S. Constitution,⁵⁹ as interpreted by the Supreme Court. As the Supreme Court explained, this Clause prohibits payment of federal government funds to an

⁵⁷ *Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket No. 97-21, Order, FCC 99-291, 1999 WL 809695 (1999), at ¶ 7 (“We, therefore, direct USAC, pursuant to sections 54.702 and 54.705 of the Commission's rules, and with close Commission oversight, to adjust funding commitments made to schools and libraries where disbursement of funds associated with those commitments would result in *violations of a federal statute*.”) (emphasis added) (“*COMAD Order*”).

⁵⁸ *COMAD Order*, at ¶ 4 (“USAC discovered applications in two general categories where disbursement of funds for these applications would violate the Act.”).

⁵⁹ U.S. Const. art. I, § 9, cl. 7 (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”).

individual when such payment, “would be in direct contravention of the federal statute upon which his ultimate claim to the funds must rest.”⁶⁰ While finding that payments of E-Rate support do not involve disbursements from the Treasury, the Commission concluded that payment of E-Rate support for services or to providers that are ineligible under the Communications Act would impermissibly “grant . . . a money remedy that Congress has not authorized.”⁶¹ Even in approving USAC’s implementation plan, which included references to Commission rule violations, the Commission failed to grant the authority necessary for USAC to proceed with such COMADs, instead reiterating that, “[a]s explained in the *Commitment Adjustment Order*, both the Debt Collection Improvement Act (DCIA) and the Commission’s rules require collection of any disbursements it made *in violation of the Act*.”⁶²

Here, neither TCBA nor SLD have asserted that LEUSD’s actions violate the Communications Act or any other federal statute and, as a result, the COMADs are *ultra vires* and must be vacated. TCBA did not even purport to examine LEUSD’s compliance with any provision of the Communications Act.⁶³ The Audit Report and the SLD COMADs allege only a violation of Section 54.504(a) of the Commission’s rules and, as shown herein, even that claim is demonstrably wrong. As such, the Commission and USAC lack authority to sustain the COMADs issued to LEUSD, and must vacate them forthwith.

⁶⁰ *OPM v. Richmond*, 496 U.S. 414, 424 (1990).

⁶¹ *COMAD Order*, at ¶ 7 (quoting *Richmond*, 496 U.S. at 426) (alteration in original).

⁶² *Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket No. 97-21, Order, FCC 00-350, 15 FCC Rcd. 22975 (2000), at ¶ 3.

⁶³ See Audit Report, Att. 1 (listing only specific sections of 47 C.F.R. Part 54 and selected Commission orders).

3. Examination of Compliance with State and Local Procurement Laws Was Outside the Scope of the Audit

Because a violation of state and local procurement policies does not constitute an independent violation of the Communications Act or the Commission's implementing rules or orders, TCBA's finding that LEUSD "did not comply with all state and local procurement policies" is plainly outside the scope of the audit and should be given no weight by the Commission or SLD.

The letter from the Commission's Inspector General, who supervised the conduct of the audit, stated that the audit would cover "records and documents that demonstrate compliance with the FCC's rules and orders."⁶⁴ Similarly, the entrance letter from the USAC Internal Audit Division also indicated that the audit would be conducted "principally to assess compliance with FCC Rules."⁶⁵ The TCBA entrance letter similarly stated that the audit would assess LEUSD's "compliance with applicable requirements of 47 C.F.R. Sections 54.500 through 54.523 . . . and related FCC Orders."⁶⁶

Despite the fact that all three letters stated that FCC OIG would be overseeing the conduct of the audit, the FCC OIG appears to have engaged in little or no effective oversight of LEUSD's audit. LEUSD had no contact with FCC OIG representatives, nor could it identify any other evidence of FCC OIG involvement. The Audit Report contains no statement of any views attributed to FCC OIG.

⁶⁴ Nilsson Letter at 1 (Attachment D to **Exhibit F**, hereto).

⁶⁵ Scott letter at 1 (Attachment E to **Exhibit F**, hereto).

⁶⁶ See **Exhibit F** at 1.

Finally, the Audit Report itself included, as Attachment 1, a list of “47 C.F.R. Part 54 Rules and Related Orders With Which Compliance was Examined,” which included no state or local laws, regulations, or policies whatsoever.⁶⁷ While the Audit Report correctly noted that Section 54.504(a) “states that state and local competitive bid requirements apply” to the procurement of services eligible for E-Rate support, no federal violation results from any Beneficiary’s failure to follow such state and local requirements. Accordingly, even if LEUSD were to have failed to observe a state or local procurement policy, which it did not, such failure would not demonstrate a lack of compliance with any Commission rules or orders within the scope of the audit engagement.

4. The Attestation Audit Process Was Fatally Flawed and the Audit Report Therefore Cannot Support a COMAD

The Round 3 attestation audits, of which LEUSD was a part, were conducted under the supervision of the FCC OIG, which stated two objectives. One, the audits were intended to assess the extent to which the Schools & Libraries Program was being administered in accordance with the Commission's rules, orders and interpretative opinions. Two, the audits were intended to yield results that would permit statistical estimates of the error rates under the Improper Payments Information Act of 2002 (“IPIA”).⁶⁸

After the conclusion of these audits, the Commission concluded that this structure was fundamentally and fatally flawed. As explained in the FCC OIG’s Semiannual Report to Congress released following the conclusion of the LEUSD audit, there were

⁶⁷ Audit Report, Att. 1.

⁶⁸ *The Schools and Libraries Program Initial Statistical Analysis of Data from the 2007/2008 Compliances Attestation Examinations* (FCC Office of Inspector General, Dec. 12, 2008), at 2 (available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287307A1.pdf).

two fundamental problems with the structure of the attestation audit program. *First*, the OIG's involvement in supervising the audits violated the strictures of the Inspector General Act of 1978, as amended, which prohibits an Inspector General from assuming any program operating responsibilities of the agency that it is charged with monitoring.⁶⁹ The FCC OIG concluded that, "a large part of the OIG's expansive role in the FCC's IPIA assessment process since 2006 was more appropriately within the purview of the Commission operating responsibilities delegated to the Office of Managing Director."⁷⁰ The FCC OIG indicated that it would thereafter adopt more focused and traditional roles that would be "appropriate to OIG's mission and . . . not duplications of or substitutes for agency operational responsibilities."⁷¹

Second, the FCC OIG concluded that the existing audit process often conflated the twin purposes it was being asked to serve, to the detriment of both. As explained in the Semiannual Report:

Data generated from the extensive IPIA process was intended for use in meeting statutory goals of the IPIA and the Communications Act, as amended. Although not inconsistent, each statute has distinct goals and emphases. It appears that both the actual data analysis and the combined reporting of the results of the IPIA attestation examinations did not always adequately distinguish among or fully serve those goals. As a result, the information provided to the OIG, Congress, the Commission and the public was less clear and less meaningful than it should have been.

⁶⁹ 5 USCA app. 3 § 9(a)(2).

⁷⁰ *Semiannual Report to Congress, April 1, 2009 through September 30, 2009* (FCC Office of Inspector General, Oct. 30, 2009), at 25 (available at: http://www.fcc.gov/oig/SAR_12-22-09.pdf).

⁷¹ *Id.*

As a result, after consulting with OIG, on February 12, 2010, the Commission's OMD instructed USAC to restructure its audit program "to separate the two audit objectives into distinct programs – one focused on IPIA assessment, and the second on auditing compliance with all four USF programs."⁷² In addition, OMD stated that, "OIG will no longer directly conduct or oversee the IPIA assessment program or the compliance audit program. OMD will assume responsibility for directing and overseeing USAC's implementation of these programs."⁷³

In light of these FCC OIG determinations, the Commission should take no action based on the unreliable findings of the E-Rate attestation audits overseen by the OIG. The FCC OIG has determined, not only that its oversight of the audits violated the Inspector General Act of 1978, but that the audit findings often failed to "adequately distinguish among or fully serve" the twin purposes of assessing E-Rate compliance under the Communications Act and generating statistical data for use in assess payment error rates under the IPIA.

B. Neither the Audit Report nor the COMAD States a Violation of Law to Support the Rescission of Funding Commitments or Recovery of Support Payments

Even putting aside questions of SLD's authority to issue the COMADs under review here, a careful examination of the purported bases for the COMADs reveals that there has never been any finding that LEUSD violated any federal, state, or local law, regulation, or policy in connection with the services at issue. It is well established that, before denying or withdrawing funding, SLD must establish with specificity the precise

⁷² Letter from Steven Van Roekel, Managing Director, FCC, to Scott Barash, General Counsel, USAC (Feb. 12, 2010), at 2.

⁷³ *Id.*

conduct of an E-Rate applicant or service provider that it contends violates the Commission's rules, and the precise violation that occurred.⁷⁴ In doing so, USAC must "provide the applicant with any and all grounds for denial"⁷⁵ after "sufficiently examining whether the Commission's rules were actually violated."⁷⁶

As shown below, taken individually or together, the collection of factually inaccurate statements and conclusory assertions advanced by TCBA and SLD nowhere establishes a violation of any kind, let alone one with the level of specificity and clarity required under Commission precedent. As such, the COMADs are entirely without foundation and must be vacated. To illustrate this point, LEUSD examines the "findings" advanced by TCBA and used by SLD to support its COMADs, as follows:

⁷⁴ See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Academy of Careers and Technologies San Antonio, TX, et al., and Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, FCC 06-55, 21 FCC Rcd 5348 (2006) ("Pattern Analysis Remand Order"), at ¶ 1 (USAC improperly denied funding "without sufficiently examining whether the Commission's rules were violated"), ¶ 6 (USAC must support findings of violations with "applicant-specific evaluations"), ¶ 7 (USAC "should not issue summary denials"), ¶ 11 (USAC must issue an award or denial based on a "complete review and analysis" of the applicant's conduct).

⁷⁵ *Requests for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al. Columbia, Louisiana, and Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 08-449, 23 FCC Rcd 2784, ¶ 2 n.5 (2008) ("Caldwell Parish"); see also *Requests for Review and Waiver of Decisions of the Universal Service Administrator by State of Arkansas, Department of Information Systems, Little Rock, Arkansas, et al.*, Order, 23 FCC Rcd 9373, ¶ 1 n.5 (2008); *Requests for Review of the Decision of the Universal Service Administrator by District of Columbia Public Schools*, Order, 23 FCC Rcd 15585, ¶ 7 n.39 (2008); *Review of Decisions of the Universal Service Administrator by Collegio Nuestra Senora del Carmen, Hatillo, Puerto Rico, et al.*, Order, 23 FCC Rcd 15568, ¶ 18 n.62; *Request for Review of a Decision of the Universal Service Administrator by Albert Lea Area Schools, Albert Lea, Minnesota, et al.*, Order, 24 FCC Rcd 4533, ¶ 11, n.51 (2009).

⁷⁶ *Id.*, at ¶ 7.

1. The Finding in the Audit Report Identifies No Violation of Law and Therefore Cannot Support a COMAD

Despite stating a finding that LEUSD “Did Not Comply with All State and Local Procurement Policies,” the Audit Report fails to identify even a single such violation.

First, as discussed above, compliance with state and local procurement and competitive bidding requirements is an obligation of state and local law; while violation of these requirements may expose an applicant to state and local penalties, it does not constitute an independent violation of the Commission’s rules.

Second, the Audit Report, by its own terms, “does not provide a legal determination on [LEUSD’s] compliance with specified requirements.”⁷⁷ Any such legal determination, of course, would need to be made by a judicial or administrative authority of competent jurisdiction. As discussed above, neither USAC nor the Commission have the requisite legal authority to investigate compliance with state and local procurement laws, or to make a legal determination that a violation has occurred. It is a fundamental axiom of the rule of law, however, that such a legal determination is a prerequisite to the imposition of legal sanctions, such as the COMADs at issue in this Request for Review. In the absence of such a legal determination, the COMADs must be vacated as they lack the necessary foundation.

Third, the Audit Report itself shows that LEUSD’s actions did not even violate the two non-federal criteria against which TCBA tested LEUSD’s assertion of compliance, namely Board Policy 3300 and Section 20112 of the California Public Contract Code. The Audit Report identifies three “Conditions” that purportedly caused

⁷⁷ Audit Report at 1.

the violation, none of which actually violates these or any other state or local procurement policies.

Initially, the Audit Report states that, in procuring the services for which LEUSD requested support pursuant to the FRNs under review, the LEUSD “procurement of telecommunications services and Internet access, including receiving bids and selecting the service providers, was carried out solely by the Director of Information Technology (IT) Services, who also played a lead role in developing and implementing the District’s Technology Plan and is responsible for managing the District’s technology resources and supporting its technology users.”⁷⁸

The Audit Report identifies no provisions of federal or California law that prohibits a single school employee from fulfilling all of these functions. Indeed, in light of the ongoing financial and debt crises being faced by federal, state, and local governmental agencies nationwide, LEUSD expects that many school district employees, especially those without direct teaching responsibilities, are being asked to take on broader responsibilities. While the Audit Report complains that the “Director of IT . . . was not independent of the internal customers or users of the District’s technology services,” it does not identify any federal, state or local requirement mandating such independence.

Similarly, while citing the potential for “real or apparent conflicts of interest,” the Audit Report fails to identify even a single concrete example of how the Director of IT’s familiarity with LEUSD’s Technology Plan, its IT requirements, and the needs and concerns of its technology users could create such conflicts. Indeed, such familiarity

⁷⁸ Audit Report, Att 2.

would appear to be an unqualified benefit. Certainly, in light of the fact that LEUSD received only one bid in response to its FY 2006 RFP and no bids in response to its FY 2007 RFP, it would be impossible to assert any effect on LEUSD's procurement of the services that were the subject of the FRNs at issue in this matter, and the Audit Report makes no attempt to do so.

The Audit Report next states that, "[t]he Director of IT carried out the procurement process without a written procurement manual or other document describing procurement policies and procedures to be followed."⁷⁹ This statement apparently willfully ignores quotations from both LEUSD Board Policies 3300 and 3311 appearing nearby in the text of the Audit Report, as it fails to acknowledge that these policies are indisputably written and address themselves to procurement matters. It also contradicts TCBA's own evaluation of these documents in which it stated, "[w]e recognize that the Board has established such policies, and the District's Purchasing Department did have a document containing the Board policies and state codes."⁸⁰ Although the TCBA Evaluation goes on to complain that LEUSD "did not go beyond these policies and codes and establish a written procurement manual or other document describing specific procurement procedures to be followed," it cites no federal, state, or local legal requirement to do so, noting only that "[s]uch a document can help" to ensure compliance.⁸¹

⁷⁹ Audit Report, Att. 2, at 4.

⁸⁰ Audit Report, Att. 2, at 11 (section entitled "TCBA Evaluation").

⁸¹ *Id.*

What is most startling, however, is that the Audit Report's findings continue to include the lack of a written procurement manual as a finding at all, blatantly disregarding SLD's corrective instructions to the contrary. During the course of the audit field work, the TCBA representatives informed LEUSD staff members that members of the audit team were retired federal auditors with extensive experience relating to federal contracts and grant programs. The Office of Management and Budget ("OMB") has enacted specific requirements applicable to such programs. For example, OMB Circular A-102, now codified individually by federal grants-making agencies, governs the actions of state and local governments in connection with federal grants, requires local governments to "have written selection procedures for procurement transactions" that meet specific requirements.⁸² E-Rate is not considered a federal grant program to which the OMB Circulars, Single Audit Act, or other federal grant requirements apply. As such, USAC explicitly cautioned the TCBA audit team that it was required to base any findings on violations of the Commission's federal E-Rate rules and orders, and not on, for example, "best practices" promulgated in other contexts by other federal agencies. In fact, the Audit Report identifies no federal, state, or local requirement to maintain a written procurement manual for use in procuring services supported by E-Rate services.

The Ombudsman's March 7, 2011 statement, in response to LEUSD's post-COMAD inquiry, that "[t]he FCC rule regarding a 'written procurement manual' is reference to the requirement to follow all FCC, state, and local procurement/competitive

⁸² See, e.g., 15 C.F.R. § 24.36(c)(3). For a list of the locations in the Code of Federal Regulations where federal agencies have codified OMB Circular A-102, also known as the "Grants Management Common Rule," see http://www.whitehouse.gov/omb/grants_chart.

bidding requirements,” is equally unavailing.⁸³ Plainly, the rule cited by the Ombudsman, 47 C.F.R. § 54.504, contains no such requirement on its face. Moreover, as demonstrated above, violation of a state or local procurement or competitive bidding requirement does not constitute an independent federal violation of Section 54.504. Finally, LEUSD has since provided a formal legal opinion of qualified California counsel that LEUSD has complied with all applicable California procurement laws, refuting any possible claim that an as-yet unidentified state or local requirement exists in this regard.⁸⁴

Finally, the Audit Report asserts as a condition supporting the finding that, “Requests for Proposals (RFP) were posted on the District web site.”⁸⁵ The Audit Report fails to make clear how, if at all, LEUSD’s posting of the RFP on its web site could violate state or local procurement policies.

By raising this concern, however, the Audit Report betrays the auditors’ fundamental misunderstanding of California public contract law. The California Public Contract Code provides LEUSD with options. Under California State law, LEUSD chose to follow Section 10299, which governs procurement under state master contracts that previously have been competitively bid by the California Department of General Services.⁸⁶ Section 10299 authorizes the Department of General Services to “consolidate the needs of multiple state agencies for information technology, goods and services,” and establish contracts, master contracts, and similar vehicles pursuant to a centralized

⁸³ See **Exhibit M**.

⁸⁴ See Opinion of Atkinson, Andelson, Loya, Ruud & Romo, April 12, 2011 (attachment to **Exhibit B**, hereto).

⁸⁵ *Id.*

⁸⁶ Cal. Pub. Cont. Code § 10299.

competitive bidding process identified therein.⁸⁷ Once these vehicles are in place, the statute explicitly states that “school districts may, *without further competitive bidding*, utilize contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department for use by school districts for the acquisition of information technology, goods, and services.”⁸⁸

The Audit Report utterly ignores this California State law, despite the fact that the Audit Report reveals LEUSD’s explicit statement that it “purchased telecommunications and Internet services via the California Integrated Telecommunications Network, CALNET Master Agreement CNT-001 (CalNet 1) that was competitively bid by the California Department of General Services.”⁸⁹ Even without this statement, however, it is clear on the face of LEUSD’s service contracts themselves that they describe purchases under the CALNET 1 state master contract.

LEUSD well recognizes that, under Commission policy regarding state master contracts, it is required to follow the Commission’s Part 54 competitive bidding rules, even if, as in this case, California law does not require LEUSD to conduct further competitive bidding before purchasing services covered by the CALNET 1 state master contract. In both FY 2006 and FY 2007, it scrupulously adhered to these requirements, posting a Form 470 each year.⁹⁰ In FY 2006, LEUSD received only one valid bid, from

⁸⁷ *Id.*, § 10299(a).

⁸⁸ *Id.*, § 10299(b) (emphasis added).

⁸⁹ Audit Report, Att. 2, at 7-8 (section entitled “Beneficiary Response”).

⁹⁰ In the *Kalamazoo Order*, the Commission made clear that an applicant may treat its existing contract as one offer in response to a subsequent call for competitive bids. After providing the requisite 28 days and carefully considering all bids received, the applicant may determine that the best available option is contained in its existing

AT&T, which reflected the rates, terms, and conditions contained in the CALNET 1 contract. After the allowable contract date had passed, LEUSD properly memorialized its decision to accept this bid, and filed its Form 471 accordingly. Similarly, in FY 2007, LEUSD received no bids other than the constructive bid contained in its existing CALNET 1 contract. As such, after the allowable contract date had passed for the FY 2007 Form 470, LEUSD memorialized its decision to continue this service, and filed its Form 471 accordingly.

Whatever the scope of Section 54.504(a) statement that the federal competitive bid requirements “are not intended to preempt such state or local [competitive bid] requirements,” it clearly does not foreclose an applicant’s right to select among procurement alternatives permitted by state law, at least where the applicant also complies with the Commission’s federal competitive bidding requirements. In this case, as affirmed by the formal legal opinion of licensed California counsel, LEUSD has fully complied with the Section 10299 process, a fact that the Audit Report fails to recognize or examine.

2. The SLD COMADs Identify No LEUSD Violation of Law and Therefore Cannot Stand

The SLD COMADs contain an assortment of factual misstatements, sentence fragments, and conclusory assertions that make it difficult to determine what, if any, LEUSD actions the SLD believed to be violations. As such, the COMADs themselves plainly violate the Commission’s directives governing USAC’s administration, review,

contract. In such a case, the *Kalamazoo Order* directs applicants “to memorialize their decision to continue the service and enter the date of this memorialization as the contract award date of the renewed contract in their FCC Form 471.” *Kalamazoo Order*, ¶ 7.

and issuance of COMADs. Virtually every element of the COMADs' findings has been addressed above, in connection with the discussion of the Audit Report, and LEUSD's arguments apply with equal force to the reiteration in the COMADs of those earlier erroneous findings.

Importantly, however, to the extent that SLD raised new matters in the COMAD or its preceding correspondence with LEUSD, the TCBA auditors had already passed on those matters. Specifically, after weeks of on-site field work at LEUSD, the Audit Report stated that, with the exception of the finding related to state and local procurement law (debunked above), LEUSD "complied with the aforementioned requirements [of the 47 C.F.R. Part 54 rules and related orders under examination] relative to disbursements of \$455,067.33 from the Universal Service Fund during the fiscal year ended June 30, 2008, for telecommunications services and Internet access and relative to its application and service provider selection processes for Funding Years 2006 and 2007."⁹¹

First, the SLD letters of September 9, 2010 and September 16, 2010, in which SLD raised possible issues regarding whether LEUSD had selected its E-Rate vendor using price as a primary factor and whether it had submitted a bona fide request for services, duplicated TCBA's earlier efforts. The answers to these questions are apparent on the face of the record. Specifically, the RFPs examined by TCBA and identified in LEUSD's FY 2006 and FY 2007 Form 470s explicitly identified "overall cost of the vendor's proposal" as the first primary factor to be used in connection with the award. Further, the Audit Report itself explicitly found that the LEUSD Director of IT Services

⁹¹ Audit Report at 2.

“played a lead role in developing and implementing the District’s Technology Plan,”⁹² and concluded that LEUSD had complied fully with all requirements of the Commission’s Part 54 rules and orders, except with respect to a purported (but, as discussed herein, unspecified) violation of state or local procurement policies.

Second, the COMADs themselves identify no violation of law. The initial statement in the COMADs that, “[o]n your FY 2006⁹³ FCC Form 470 you certified that you reviewed and complied with all FCC, state, and local procurement/competitive bidding requirements” is true, although it fails to state a violation of any legal requirement. Indeed, a violation would be more likely to occur had LEUSD *not* so certified.

The COMAD next contains a misstatement that, “[d]uring the course of an audit it was determined that you failed to comply with all FCC, state, and local procurement/competitive bidding requirements.” The Audit Report, in fact, stated as its only finding that LEUSD did not comply with all *state and local* procurement policies, a finding LEUSD has refuted above. The COMAD goes on to adopt the assertion from the Audit Report that LEUSD carried out its procurement of telecommunications services and Internet access “without a written procurement manual or other document describing procurement policies and procedures to be followed.” Like the Audit Report, however, the COMAD fails to identify any legal requirement mandating use of such a written

⁹² Audit Report, Attachment 2. In any event, the September 16, 2010 letter raising this issue merely reiterated earlier questions regarding the LEUSD vendor selection process, and posed no questions as to whether LEUSD’s request for services was a bona fide one made after internal assessment of LEUSD’s technology needs.

⁹³ The two COMADs relating to the FY 2007 FRNs also include this statement, despite an apparent lack of relevance to those matters.

document, fails to assess whether Board Policies 3300 and 3311 would meet such a requirement, fails to identify any error in the formal legal opinion provided by LEUSD's licensed California counsel confirming compliance, and fails to recognize that California state law does not require an additional, redundant competitive bid process when schools purchase services off of a state master contract, which is already the product of competitive bidding.

The COMAD next asserts that LEUSD "ha[s] not substantiated the claim that [it has] complied with state procurement requirements." The only parties claiming noncompliance, however, are SLD and TCBA, and neither has identified any specific legal requirement that it believes LEUSD violated. Moreover, to the extent this statement was ever true, it is now clearly false, given that LEUSD has provided the opinion of licensed California counsel that it "did fully comply with state and local procurement requirements through utilization of a CALNET contract, a valid, established and widely used and accepted method of procurement."⁹⁴

The COMAD also states that, "the FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury." Regardless of whether this is an accurate summary of the Commission's rules, neither SLD nor the Audit Report makes any assertion that LEUSD has violated these requirements. To the contrary, as

⁹⁴ See Opinion of Atkinson, Andelson, Loya, Ruud & Romo, April 12, 2011 (attached to **Exhibit B**, hereto).

discussed, the Audit Report found that complied with all Commission Part 54 rules and orders, except with respect to a purported (but, as discussed herein, unspecified) violation of state or local procurement policies. Moreover, while SLD raised this issue in its September 16, 2010 letter to LEUSD, it requested no information that would bear on LEUSD's compliance.⁹⁵

Given this hodge-podge of out-of-context statements (and misstatements) and conclusory assertions of unspecified violations, LEUSD remains utterly mystified by the conclusion in the COMADs that, "[a]ccordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant." Such a result is in no way supported by the COMAD's analysis.

Third, LEUSD is even more mystified that SLD responded to its appeal by requesting "documentation showing that the Form 470 and RFPs for services requested" in FY 2006 and FY 2007 "were posted on the District's website or some other publication of general circulation published by the District." This information is readily available in the findings in the Audit Report.⁹⁶ Moreover, SLD's Decisions denying LEUSD's appeal of the COMADs – issued only one week after the passage of the SLD-imposed deadline for LEUSD to respond and despite LEUSD's request for more time – rest almost entirely on LEUSD's purported failure to provide this information.

⁹⁵ *Cf. Caldwell Parish*, 23 FCC Rcd 2784, ¶ 11 ("Although each PAIR letter stated in the introductory paragraph that the applicant's FCC Form 470 had similarities to the FCC Forms 470 of other applicants who also chose SEND as their service provider, the questions themselves did not ask the applicants to explain such similarities").

⁹⁶ Audit Report, Att. 2, at 4.

Conclusion

Six years have passed since LEUSD first requested E-Rate funding pursuant to the FRNs at issue in this case. LEUSD has spent almost four years and untold hours addressing an issue that should have taken no more than a phone call and a letter to resolve. LEUSD has expended an inordinate amount of administrative and financial resources to try to resolve an auditor's simple misunderstanding. Presumably, had the FCC OIG provided even a scintilla of oversight or direction on this matter, it would not have risen to this level of waste and abuse of public resources at both the state and federal level. LEUSD is left to wonder who is accountable at the federal level for proper and effective oversight, for timely and correct decisions, and for handling grievances of the nature described herein.

Based on the foregoing arguments, LEUSD requests that the Commission vacate the COMADs at issue in this Request for Review, on the basis that adjudication of violations of state or local procurement requirements falls outside of the jurisdiction of the Commission and USAC; that the COMADs were issued improperly given that they state no violation of the Communications Act, as required; and that USAC completely failed to substantiate its assertion that LEUSD violated any Commission statute or rule.

LEUSD therefore urges the Commission to grant this Request for Review and reverse the Decisions of the SLD in this matter, vacate the COMADs identified herein, and direct SLD to restore its funding commitments for the affected FRNs, Nos. 1423446, 1423335, 1563982, and 1564329.

Respectfully submitted,

A handwritten signature in black ink, reading "Gregory J. Bowers", is written over a horizontal line.

Gregory J. Bowers
Assistant Superintendent, Facilities &
Operations Division
Lake Elsinore Unified School District
545 Chaney Street
Lake Elsinore, California 92530

Dated: August 29, 2011

Exhibit A



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2006-2007

July 01, 2011

Cathy Benham
CSM Consulting, Inc.
3130-C Inland Empire Blvd.
Ontario, CA 91764

Re: Applicant Name: LAKE ELSINORE UNIF SCHOOL DIST
Billed Entity Number: 143749
Form 471 Application Number: 513324
Funding Request Number(s): 1423335, 1423456
Your Correspondence Dated: April 12, 2011

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2006 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1423335, 1423456
Decision on Appeal: **Denied**
Explanation:

- During the course of an audit, it was determined that Lake Elsinore Unified School District did not comply with all state and local procurement policies and that funding should be rescinded. On appeal, you stated that Lake Elsinore Unified School District did comply with all state and local policies. On June 8, 2011, Mr. J.R. Rea, the appellant, returned a call to state that he was available to respond to questions regarding the appeal. On June 9, 2011, USAC sent a letter via fax and email to Mr. J. R. Rea, requesting documentation showing that the Form 470 and RFPs for services requested in FY2007 were posted on the District's website or some other publication of general circulation published by the District. Mr. J. R. Rea was instructed that the request was time sensitive and that a response was expected within fifteen calendar days. The record shows that on June 16, 2011, USAC sent another letter via fax and email to remind Mr. J. R. Rea that

the requested documentation due date was June 24, 2011. On June 22, 2011, USAC received a Letter of Agency from the Superintendent of Lake Elsinore Unified School District, naming Cathy Benham as the new contact. On June 23, 2011, USAC received a letter from Cathy Benham, asking that the appeal be placed on hold. As the information requested was not forthcoming, USAC was unable to determine if your funding request was in compliance with Program Rules. Therefore, the funding request was denied.

On appeal, Lake Elsinore Unified School District failed to provide any evidence that USAC erred in its initial determination or that the Lake Elsinore Unified School District responded to USAC's requests for additional documentation in a timely manner. Consequently, your appeal is denied.

- USAC reviews Form 471 applications and makes funding commitment decisions in compliance with FCC rules. See 47 C.F.R. sec. 54.500 et. seq. To conduct these reviews, USAC has put in place administrative measures to ensure the prompt resolution of applications. If applicants do not respond within the designated time period, USAC reviews the application based on the information before it. See Request for Review by Marshall County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, 18 FCC Rcd. 4520, 4522, Order, DA 03-764 para. 6 (rel. Mar. 13, 2003). (Marshall County) Typically applicants are required to respond to USAC's requests for additional information necessary to complete their application within 15 days of being contacted. See Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, CC Docket No. 02-6, Order, FCC 06-54 para. 23 (rel. May 19, 2006). Id.; SLD section of the USAC website, Reference Area, "Deadline for Information Requests," www.usac.org/sl. This procedure is necessary to prevent undue delays during the application review process.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: J. R. Rea

Cathy Benham
CSM Consulting, Inc.
3130-C Inland Empire Blvd.
Ontario, CA 91764

Billed Entity Number: 143749
Form 471 Application Number: 513324
Form 486 Application Number:



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2007-2008

July 01, 2011

Cathy Benham
CSM Consulting, Inc.
3130-C Inland Empire Blvd.
Ontario, CA 91764

Re: Applicant Name: LAKE ELSINORE UNIF SCHOOL DIST
Billed Entity Number: 143749
Form 471 Application Number: 566516
Funding Request Number(s): 1563982, 1564329
Your Correspondence Dated: April 12, 2011

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2007 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1563982, 1564329
Decision on Appeal: **Denied**
Explanation:

- During the course of an audit, it was determined that Lake Elsinore Unified School District did not comply with all state and local procurement policies and that funding should be rescinded. On appeal, you stated that Lake Elsinore Unified School District did comply with all state and local policies. On June 8, 2011, Mr. J.R. Rea, the appellant, returned a call to state that he was available to respond to questions regarding the appeal. On June 9, 2011, USAC sent a letter via fax and email to Mr. J. R. Rea, requesting documentation showing that the Form 470 and RFPs for services requested in FY2007 were posted on the District's website or some other publication of general circulation published by the District. Mr. J. R. Rea was instructed that the request was time sensitive and that a response was expected within fifteen calendar days. The record shows that on June 16, 2011, USAC sent another letter via fax and email to remind Mr. J. R. Rea that the requested documentation due date was June 24, 2011. On June 22, 2011, USAC received a Letter of Agency from the Superintendent of Lake Elsinore Unified School

District, naming Cathy Benham as the new contact. On June 23, 2011, USAC received a letter from Cathy Benham, asking that the appeal be placed on hold. As the information requested was not forthcoming, USAC was unable to determine if your funding request was in compliance with Program Rules. Therefore, the funding request was denied.

On appeal, Lake Elsinore Unified School District failed to provide any evidence that USAC erred in its initial determination or that the Lake Elsinore Unified School District responded to USAC's requests for additional documentation in a timely manner. Consequently, your appeal is denied.

- USAC Schools and Libraries Committee oversees the administration of the schools and libraries support mechanism and has the authority to make decisions concerning the administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations. *See* 47 C.F.R. sec. 54.705 (a)(1)(iii). To conduct these reviews, USAC has put in place administrative measures to ensure the prompt resolution of applications. If applicants do not respond within the designated time period, USAC reviews the application based on the information before it. *See* Request for Review by Marshall County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, 18 FCC Rcd 4520, 4522, Order, DA 03-764 para. 6 (rel. Mar. 13, 2003). Typically, applicants are required to respond to USAC's requests for additional information necessary to complete their application within 15 days of being contacted. *See* Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Mechanism, CC Docket No. 02-6, Order, 21 FCC Rcd 5316-5317, FCC 06-54 para. 23 (rel. May 19, 2006). *See also* SLD section of the USAC website, Reference Area, "Deadline for Information Requests," www.usac.org/sl/. For those instances where USAC contacts the applicant in reference to a Selective Review Information Request, the applicant is provided 30 days to comply with the request. This procedure is necessary to prevent undue delays during the application review process.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: J. R. Rea

Cathy Benham
CSM Consulting, Inc.
3130-C Inland Empire Blvd.
Ontario, CA 91764

Billed Entity Number: 143749
Form 471 Application Number: 566516
Form 486 Application Number:

Exhibit B



Lake Elsinore Unified School District

April 12, 2011

Letter of Appeal
Schools and Libraries Division – Correspondence Unit
100 S. Jefferson Blvd.
Whippany, NJ 07981

To Whom it May Concern:

This letter of appeal is in response to four Notification of Commitment Adjustment Letters (COMADs) issued by USAC on February 15, 2010 to Beneficiary Lake Elsinore Unified School District, Billed Entity Number 143749. The COMADs rescinded funding for the following funding requests and amounts:

- 1) FRN #1423335 on FCC Form 471 #513324 for Funding Year 2006, of \$402,033.21;
- 2) FRN #1423456 on FCC Form 471 #513324 for Funding Year 2006, of \$22,343.16;
- 3) FRN #1563982 on FCC Form 471 #566516 for Funding Year 2007, of \$398,264.86;
- 4) FRN #1564329 on FCC Form 471 #566516 for Funding Year 2007, of \$5,562.38.

The COMADs corresponded to findings issued during an Attestation Examination conducted by the audit firm Thompson, Cobb, Bazilio & Associates, PC ("TCBA") in the winter of 2009. Lake Elsinore Unified School District ("LEUSD") would like to present further information that has come to light since the time of the examination.

The COMADs state the reason for the rescission of funding as the following:

"During the course of an audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements – Lake Elsinore Unified School District procurement of telecommunications services and Internet access, including receiving bids and selecting the service providers, was carried out without a written procurement manual or other document describing procurement policies and procedures to be followed and you have not substantiated the claim that you have complied with state procurement requirements."

LEUSD respectfully contends that it did comply with all FCC, state and local procurement/competitive bidding requirements and that it does have a written document that describes procurement policies, contrary to what is stated in the COMADs.

Discussion

Prior to the start of E-rate Funding Years 2006 and 2007, LEUSD had existing services with the provider AT&T that were ordered under the only state master contract available for these types of services, the California Integrated Telecommunications Network CALNET Master Agreement CNT-001 ("CalNet 1"). CalNet 1 was competitively bid by the California Department of General Services and made available

for use to public school districts under the auspices of California Public Contract Code ("CPCC") section 10299:

"(a) Notwithstanding any other provision of law, the director may consolidate the needs of multiple state agencies for information technology goods and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State agencies and local agencies may contract with suppliers awarded the contracts without further competitive bidding.

(b) The director may make the services of the department available, upon the terms and conditions agreed upon, to any school district empowered to expend public funds. These school districts may, without further competitive bidding, utilize contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department for use by school districts for the acquisition of information technology, goods, and services. The state shall incur no financial responsibility in connection with the contracting of local agencies under this section."

Following the state guidelines as indicated in CPCC section 10299(b), LEUSD signed an Authorization to Order ("ATO") on January 27, 2004 for services under the CalNet 1 contract. The term of the ATO was coterminous with the CalNet 1 contract, which the Department of General Services extended to expire on December 4, 2008. Therefore, LEUSD had a valid contract in place for the Funding Years 2006 and 2007, which was procured following state guidelines established under CPCC 10299.

Please refer to the letter from LEUSD's counsel, Atkinson, Andelson, Loya, Rudd, & Romo ("AALRR"), included in this correspondence for further analysis of procurement under California law.

In addition to following state guidelines, LEUSD also followed FCC guidelines established under 47 CFR 54.504. For the aforementioned funding requests it:

1. Had a valid technology plan at the time of its Form 470 posting.
2. Posted a Form 470 and RFP for a minimum of 28 days.
3. Considered all bid responses and selected the most cost effective service provider.

LEUSD posted Forms 470 for both Funding Years 2006 and 2007. LEUSD considered its existing ATO for services with AT&T as a response to its posted Forms 470, and memorialized this selection with the filing of the aforementioned funding requests via the Form 471. LEUSD did not receive any other valid bids in response to its posted Form 470 and RFP during this time frame.

In addition, contrary to what is stated in the COMADS, LEUSD has written policies, specifically LEUSD Board Policy AR 3311, which outlines the procurement policies for the school district. It outlines procedures to be followed as well as references to the appropriate sections of Public Contract Code, Government Code, and Education Code. While LEUSD agrees that a more comprehensive manual

would be beneficial, it is inaccurate to state that it did not have a “document describing procurement policies and procedures to be followed.”

To summarize, LEUSD met all FCC, state and local procurement/competitive bidding requirements for the aforementioned funding requests. It also does have written policies in place in regards to its procurement of services. LEUSD respectfully requests that USAC reconsider its rescission of funding.

Appellant/Organization:

Lake Elsinore Unified School District

Contact:

J. R. Rea

Contact Email:

jrrea@leusd.k12.ca.us

Contact Mailing Address:

545 Chaney Street

Lake Elsinore, CA 92530

Phone:

(951) 253-7025

Fax:

(951) 253-7003

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

12800 CENTER COURT DRIVE, SUITE 300
CERRITOS, CALIFORNIA 90703-9364
(562) 653-3200 • (714) 826-5480

FAX (562) 653-3333
WWW.AALRR.COM

FRESNO
(559) 225-6700
FAX (559) 225-3416

IRVINE
(949) 453-4260
FAX (949) 453-4262

PLEASANTON
(925) 227-9200
FAX (925) 227-9202

RIVERSIDE
(951) 683-1122
FAX (951) 683-1144

SACRAMENTO
(916) 923-1200
FAX (916) 923-1222

SAN DIEGO
(619) 485-9526
FAX (619) 485-9412

OUR FILE NUMBER:

005194.00077
1803383v1

April 12, 2011

VIA EMAIL AND FIRST CLASS MAIL

Gregory J. Bowers, Assistant Superintendent- Facilities & Operations Division
LAKE ELSINORE UNIFIED SCHOOL DISTRICT
545 Chaney St.
Lake Elsinore, CA 92530

Re: Lake Elsinore Unified School District Compliance with 47 CFR Part 54 Rules and Related Orders, Beneficiary Number 143749; Application Numbers 513324 and 566516

Dear Mr. Bowers:

The purpose of this correspondence is to provide the Lake Elsinore Unified School District ("District") with our review and analysis of the District's compliance with 47 CFR Part 54 Rules and Related Orders. It is our understanding that Thompson, Cobb, Bazilio & Associates, PC ("Audit Firm") conducted an audit of the District's compliance with these requirements and submitted its findings and conclusions in a letter dated May 12, 2009. The Audit Firm concluded that the District was materially noncompliant because it "did not comply with all state and local procurement policies." Subsequently, the District received a Funding Commitment Adjustment Report from Universal Service Administrative Company- Schools and Library Division ("USAC"), which stated that the District's funding commitment would be rescinded in full due to lack of compliance. After review of 47 CFR Part 54 Rules and Related Orders, the applicable and available methods of procurement and the actual process followed by the District, we disagree with this conclusion and assert that the District did fully comply with state and local procurement requirements through utilization of a CALNET contract, a valid, established and widely used and accepted method of procurement.

The language of Section 54.504(a) states that eligible schools must comply with federal requirements "in addition to state and local competitive bid requirements." The Federal regulations do not specify that a school district must comply with a specific state or local code provision or requirement, simply that the school district must comply with the applicable competitive bid process. The Audit Firm's analysis focused exclusively on compliance with Public Contract Code section 20112, which requires school districts to publish a notice calling for bids. It did not address the District's use of a CALNET contract and did not provide USAC

Gregory J. Bowers
April 12, 2011

with an accurate assessment of the District's compliance with federal, state and local procurement requirements.

Under Public Contract Code section 10299, school districts are specifically allowed to use contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the California Department of General Services ("DGS") without further competitive bidding. We include the exact language of Section 10299 for your review:

10299. (a) Notwithstanding any other provision of law, the director may consolidate the needs of multiple state agencies for information technology, goods and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State agencies and local agencies may contract with suppliers awarded the contracts without further competitive bidding.

(b) The director may make the services of the department available, upon the terms and conditions agreed upon, to any school district empowered to expend public funds. These school districts may, without further competitive bidding, utilize contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department for use by school districts for the acquisition of information technology, goods, and services. The state shall incur no financial responsibility in connection with the contracting of local agencies under this section. (Emphasis added.)

The District obtained its telecommunications and internet services through the California Integrated Telecommunications Network, CALNET Master Agreement CNT-001 (CalNet1) ("CALNET Contract"), which was competitively bid pursuant to the Public Contract Code by the Office of Technology Services Statewide Telecommunications and Network Division (STND) of DGS. The CALNET Contract was awarded in 1998 and extended through December 3, 2008. It is administered by DGS in compliance with all state procurement requirements and, because of the collective purchasing power of the State, is able to provide public agencies, including school districts, with goods and services at lower costs. Similarly, the California Multiple Award Schedules ("CMAS"), which is coordinated by the Procurement Division of DGS, offers competitively bid contracts for products and services to local agencies, including school districts.

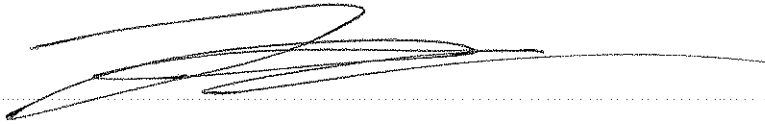
In light of the information described above, it is our opinion that the Audit Firm's initial analysis, which was limited to a specific Public Contract Code section, failed to address all methods of procurement available to the District. Consequently, USAC's decision to rescind the funds allocated to the District was based on incomplete information. As noted above, use of contracts previously competitively bid and awarded by DGS is a legally valid, widely accepted and well established method of procurement for school districts throughout the state. The District's procurement of services through the CALNET Contract satisfied the requirements of 47 CFR Part 54 Rules and Related Orders.

Gregory J. Bowers
April 12, 2011

Please feel free to contact us with any questions.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A handwritten signature in black ink, appearing to read "Terry T. Tao", with a long horizontal flourish extending to the right.

Terry T. Tao

cc: Dr. Frank Passarella, Superintendent
JR Rea, Director IT Services
Cathy Benham, Manager E-Rate Services, CSM

Exhibit C



Notification of Commitment Adjustment Letter

Funding Year 2006: July 1, 2006 - June 30, 2007

February 15, 2011

J. R. REA

LAKE ELSINORE UNIF SCHOOL DIST

545 CHANEY ST

LAKE ELSINORE, CA 92530 2712

Re: Form 471 Application Number: 513324
Funding Year: 2006
Applicant's Form Identifier: LEUSD FY9 06/07
Billed Entity Number: 143749
FCC Registration Number: 0012982179
SPIN: 143002665
Service Provider Name: Pacific Bell Telephone Company

Service Provider Contact Person: Michael Swisher

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

This is NOT a bill. If recovery of disbursed funds is required, the next step in the recovery process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at http://www.fcc.gov/debt_collection/faq.html.

TO APPEAL THIS DECISION:

You have the option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

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 - Form 471 Application Number,
 - Billed Entity Number, and
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To submit your appeal to us on paper, send your appeal to:

Letter of Appeal
Schools and Libraries Division - Correspondence Unit
100 S. Jefferson Rd.
P. O. Box 902
Whippany, NJ 07981

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Note that if the Funds Disbursed to Date amount is less than the Adjusted Funding Commitment amount, USAC will continue to process properly filed invoices up to the Adjusted Funding Commitment amount. Review the Funding Commitment Adjustment Explanation in the attached Report for an explanation of the reduction to the commitment(s). Please ensure that any invoices that you or your service provider(s) submits to USAC are consistent with Program rules as indicated in the Funding Commitment Adjustment Explanation. If the Funds Disbursed to Date amount exceeds your Adjusted Funding Commitment amount, USAC will have to recover some or all of the disbursed funds. The Report explains the exact amount (if any) the applicant is responsible for repaying.

Schools and Libraries Division
Universal Services Administrative Company

cc: Michael Swisher
Pacific Bell Telephone Company

Funding Commitment Adjustment Report for
Form 471 Application Number: 513324

Funding Request Number:	1423335
Services Ordered:	TELCOMM SERVICES
SPIN:	143002665
Service Provider Name:	Pacific Bell Telephone Company
Contract Number:	N/A
Billing Account Number:	
Site Identifier:	143749
Original Funding Commitment:	\$402,143.11
Commitment Adjustment Amount:	\$402,143.11
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$402,033.21
Funds to be Recovered from Applicant:	\$402,033.21

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2006 FCC Form 470 you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the course of an audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements-Lake Elsinore Unified School District procurement of telecommunications services and Internet access, including receiving bids and selecting the service providers, was carried out without a written procurement manual or other document describing procurement policies and procedures to be followed and you have not substantiated the claim that you have complied with state procurement requirements. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to comply with local and state procurement laws and you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Cathy Benham

LAKE ELSINORE UNIF SCHOOL DIST

3130-C Inland Empire Blvd.

Ontario, CA 91764 2712



Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2006: July 1, 2006 - June 30, 2007

February 15, 2011

J. R. REA

LAKE ELSINORE UNIF SCHOOL DIST

545 CHANEY ST

LAKE ELSINORE, CA 92530 2712

Re: Form 471 Application Number:	513324
Funding Year:	2006
Applicant's Form Identifier:	LEUSD FY9 06/07
Billed Entity Number:	143749
FCC Registration Number:	0012982179
SPIN:	143004610
Service Provider Name:	SBC Internet Services, Inc.
Service Provider Contact Person:	Michele Smith

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

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Schools and Libraries Division
Universal Services Administrative Company

cc: Michele Smith
SBC Internet Services, Inc.

**Funding Commitment Adjustment Report for
Form 471 Application Number: 513324**

Funding Request Number:	1423456
Services Ordered:	INTERNET ACCESS
SPIN:	143004610
Service Provider Name:	SBC Internet Services, Inc.
Contract Number:	N/A
Billing Account Number:	0651416761
Site Identifier:	143749
Original Funding Commitment:	\$22,343.16
Commitment Adjustment Amount:	\$22,343.16
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$22,343.16
Funds to be Recovered from Applicant:	\$22,343.16

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2006 FCC Form 470 you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the course of an audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements-Lake Elsinore Unified School District procurement of telecommunications services and Internet access, including receiving bids and selecting the service providers, was carried out without a written procurement manual or other document describing procurement policies and procedures to be followed and you have not substantiated the claim that you have complied with state procurement requirements. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to comply with local and state procurement laws and you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Cathy Benham

LAKE ELSINORE UNIF SCHOOL DIST

3130-C Inland Empire Blvd.

Ontario, CA 91764 2712



Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2007: July 1, 2007 - June 30, 2008

February 15, 2011

J. R. REA

LAKE ELSINORE UNIF SCHOOL DIST

545 CHANEY STREET

LAKE ELSINORE, CA 92530 2712

Re: Form 471 Application Number:	566516
Funding Year:	2007
Applicant's Form Identifier:	FY10 07/08
Billed Entity Number:	143749
FCC Registration Number:	0012982179
SPIN:	143022137
Service Provider Name:	AT&T Corp.
Service Provider Contact Person:	Lysander Watson

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were committed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now adjust your overall funding commitment. The purpose of this letter is to make the required adjustments to your funding commitment, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error (if any).

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Schools and Libraries Division
Universal Services Administrative Company

cc: Lysander Watson
AT&T Corp.

Funding Commitment Adjustment Report for
Form 471 Application Number: 566516

Funding Request Number:	1564329
Services Ordered:	INTERNET ACCESS
SPIN:	143022137
Service Provider Name:	AT&T Corp.
Contract Number:	N/A
Billing Account Number:	0230064982
Site Identifier:	143749
Original Funding Commitment:	\$5,628.00
Commitment Adjustment Amount:	\$5,628.00
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$5,562.38
Funds to be Recovered from Applicant:	\$5,562.38

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2006 FCC Form 470 you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the course of an audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements-Lake Elsinore Unified School District procurement of telecommunications services and Internet access, including receiving bids and selecting the service providers, was carried out without a written procurement manual or other document describing procurement policies and procedures to be followed and you have not substantiated the claim that you have complied with state procurement requirements. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to comply with local and state procurement laws and you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Cathy Benham

LAKE ELSINORE UNIF SCHOOL DIST

3130-C Inland Empire Blvd.

Ontario, CA 91764 2712



Schools and Libraries Division

Notification of Commitment Adjustment Letter

Funding Year 2007: July 1, 2007 - June 30, 2008

February 15, 2011

J. R. REA

LAKE ELSINORE UNIF SCHOOL DIST

545 CHANEY STREET

LAKE ELSINORE, CA 92530 2712

Re: Form 471 Application Number:	566516
Funding Year:	2007
Applicant's Form Identifier:	FY10 07/08
Billed Entity Number:	143749
FCC Registration Number:	0012982179
SPIN:	143002665
Service Provider Name:	Pacific Bell Telephone Company
Service Provider Contact Person:	Michael Swisher

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Schools and Libraries Division
Universal Services Administrative Company

cc: Michael Swisher
Pacific Bell Telephone Company

Funding Commitment Adjustment Report for
Form 471 Application Number: 566516

Funding Request Number:	1563982
Services Ordered:	TELCOMM SERVICES
SPIN:	143002665
Service Provider Name:	Pacific Bell Telephone Company
Contract Number:	N/A
Billing Account Number:	
Site Identifier:	143749
Original Funding Commitment:	\$398,264.86
Commitment Adjustment Amount:	\$398,264.86
Adjusted Funding Commitment:	\$0.00
Funds Disbursed to Date	\$398,264.86
Funds to be Recovered from Applicant:	\$398,264.86

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. On your FY 2006 FCC Form 470 you certified that you reviewed and complied with all FCC, state and local procurement/competitive bidding requirements. During the course of an audit it was determined that you failed to comply with all FCC, state and local procurement/competitive bidding requirements-Lake Elsinore Unified School District procurement of telecommunications services and Internet access, including receiving bids and selecting the service providers, was carried out without a written procurement manual or other document describing procurement policies and procedures to be followed and you have not substantiated the claim that you have complied with state procurement requirements. The FCC rules require that the applicant submits a bona fide request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, submitting a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. Since you failed to comply with local and state procurement laws and you violated the competitive bidding process. Accordingly, your funding commitment will be rescinded in full and USAC will seek recovery of any disbursed funds from the applicant.

Cathy Benham

LAKE ELSINORE UNIF SCHOOL DIST

3130-C Inland Empire Blvd.

Ontario, CA 91764 2712

Exhibit D

Lake Elsinore Unified School District
E-Rate Year 9 2006 – 2007



Request for Proposal:
Telecommunications and Internet Access
Instructions to Vendors

**Request for Proposal Project Number:
LEUSD Yr 9 Telco/LD/LS/PBX Maintenance**

Award of this Request for Proposal (RFP) is contingent upon the approval of funding from the Schools and Libraries Universal Service Administrative Company. The successful vendor agrees to bill and receive a portion of the payment for the provisions of goods and services described herein directly from the Universal Service Administrative Company ("USAC"), and/or the Schools and Libraries Division ("SLD"). Lake Elsinore Unified School District (LEUSD) and the successful vendor will act in a reasonable manner and comply with any and all Schools and Libraries Universal Service Fund Program requirements. The selected vendor agrees to abide by all applicable policies of the Universal Service Discount program. The vendor will include its Service Provider Information Number (SPIN) in its proposal. Contract will take effect on July 1, 2006, and continue through June 30, 2007. Should an extension be permitted by the Schools and Libraries Service Administrative Company the contract will be extended accordingly.

Section I - Conditions:

1. Proposals must be received by 4:00 PM local time (PST) on **Friday, February 3, 2006** by e-mail only to the following address: jr.rea@leusd.k12.ca.us. The provided email is for E-rate proposals only. Any other use, unauthorized propagation or use for solicitation unrelated to Funding Year 9 E-rate of said email will result in legal action.
2. **Proposals received after the exact time and date noted will NOT be considered for the bid process.**
3. LEUSD will not be responsible for any proposal that:
 - a. Does not indicate the RFP reference, closing date and proponent's name;
 - b. Is sent to any e-mail address other than that provided above;
 - c. Proponents may not amend their proposal after the closing date and time, unless as a result of negotiations commenced by LEUSD, but may withdraw their proposal at any time;
 - d. E-mail transmitted proposals will be accepted under the following conditions:
 - i. the proposal is received before the submission deadline at the e-mail address stated;
 - ii. LEUSD will not accept liability for any claim, demand or other actions for any reason should the e-mail transmission be interrupted, not received in its entirety, received after stated closing time and date, received by any other e-mail system other than that stated herein, or for any other reasons.
4. The vendor must bid separately on each item, unless otherwise requested herein, and shall indicate on **Appendix B and C** the unit price for each item listed and the total price for furnishing the total quantity of each item. All prices and notations must be typed or written in ink. Bids shall not be written in pencil. Mistakes may be crossed out and corrections inserted adjacent, but the correction shall be initialed in ink by the person signing the proposal. No corrections can be made after the time for opening bids.
5. All questions or inquiries concerning this RFP must be submitted to the e-mail address provided above no later than two (2) business days prior to the proposal deadline. Verbal responses to any enquiry cannot be relied upon and are not binding on either party.
6. If a contract is to be awarded as a result of this RFP, it shall be awarded to the proponent who is responsible and whose proposal provides the best potential value to LEUSD. Responsible means the capability in all respects to perform fully the contract requirements and the integrity and reliability to assure performance of the contract obligations.
7. Prices to remain firm through SLD approval, execution, and duration of the proposed contract. In the event of a price decrease for service or from the manufacture, said

- decrease shall be passed on to the District and documented with new price sheet sent to Lake Elsinore USD Business Office.
8. Any prospective vendor, who contacts any Lake Elsinore USD Board of Education member or school site during the RFP process, will be disqualified from consideration for the RFP award.
 9. The Board of Education reserves the right to reject any and all bids/proposals, or any or all items of any bid/proposal.
 10. In order to preserve uniformity and to facilitate the award of contracts, you must complete **Appendix B and C** along with the rest of your bid/proposal. It is acceptable to modify this form format for clarity but original form must be attached and changes indicated.
 11. Notice in writing to a proponent and the subsequent execution of a written agreement shall constitute the making of a contract. No proponent shall acquire any legal or equitable rights or privileges whatever until the contract is signed.
 12. The contract will contain the relevant provisions of this RFP and of the successful proposal, as well as such other terms as may be mutually agreed upon, whether arising from the proposal or as a result of any negotiations prior or subsequent there to.
 13. In the event of any inconsistency between this RFP, and the ensuing contract, the contract shall govern considering all points of the RFP are met.
 14. LEUSD has the right to cancel this RFP at any time and to reissue it for any reason whatsoever without incurring any liability and no proponent will have any claim against LEUSD as a consequence.
 15. Any amendments made by LEUSD to the RFP will be issued in writing and sent to all that have received the documents pursuant to the acknowledgement of participation.
 16. LEUSD is not liable for any costs of preparation or presentation of proposals.
 17. An evaluation committee will review each proposal. LEUSD reserves the exclusive right to determine the qualitative aspects of all proposals relative to the evaluation criteria.
 18. The proposal and accompanying documentation submitted by the proponents are the property of LEUSD and will not be returned.
 19. The vendor's proposal and any contract entered into are subject to all applicable statutes of the United States and/or of the State of California and all applicable regulations and orders of the Federal and/or State governments now in effect or which shall be in effect during the period of such contract. To include all LEUSD policies and regulations.
 20. In the event that the awarded vendor is prevented from making delivery or otherwise performing on time as specified in the contract by fire, flood, earthquake, labor or transportation problems, war, acts of government, or any other similar cause commonly known as an act of God, which is not the fault of the vendor, the vendor shall not be required to deliver or perform, subject to the following requirements:
 - a. The vendor shall send written notice to the District of the vendor's inability to perform in accordance with the contract. The notice shall contain all facts which show the condition which prevents performance.
 - b. The vendor shall send such notice as soon as possible but in no event later than the fifth (5th) day following the date of issuance of a purchase order by the District or no later than the date specified in the contract for delivery or other performance, whichever is applicable.
 - c. The District may cancel the contract or purchase order, entirely or in part.
 21. The vendor, in submitting its proposal certifies that it is an Equal Opportunity Employer, and certifies that it is in compliance with the Civil Rights Act of 1964, the State Fair Employment Practice Act, and all other applicable Federal and State laws and regulations relating to equal opportunity employment, including Executive Order No. 11246 of September 24, 1965.
 22. **Any charges for non-eligible items initially labeled by providing vendor as eligible will be the sole responsibility of the providing vendor. LEUSD will not**

be responsible for charges awarded vendor deems as eligible if USAC and SLD maintain ineligibility.

23. The Vendor shall not make any delivery or otherwise attempt to perform under the contract except on the basis of issuance by the District of a new purchase order or other written instruction.

Section II - Proposal Requirements and Project Scope

The purpose of this RFP is to solicit from qualified service providers the installation, maintenance and support of the existing telecommunication, data lines, Internet service and access and long distance services. **Complete reconfigurations (such as wireless WAN) systems will not be accepted.** RFP must include bid prices for the entire scope containing the below information:

1. System infrastructure located throughout LEUSD (**Appendix A**).
2. Vendor agrees to keep all scheduled equipment/infrastructure in good and operating condition during standard business office hours. These hours are from 7:00 am – 4:30 pm Monday – Friday in a normal working business day.
3. Major interruptions of services or emergencies (defined as a down data line, phone line, Internet service or long distance service affecting more than 30% of the users at a given site and/or district wide) are to be responded on-site within four (4) hours of notification.
4. All other services interruptions within twenty four (24) hours of notification.
5. Any vendor required scheduled maintenance shall occur after district business hours unless agreed upon by LEUSD and vendor.
6. All infrastructure for Wide Area and Local Area Network connectivity must be compatible with LEUSD current equipment (**Appendix B**).
7. Interested parties must bid on items listed in **Appendix B and C** for existing and future capabilities.
8. Vendor must maintain full Committed Information Rate (CIR) for all data lines. **Frame Relay and Wireless will NOT be considered as acceptable substitution(s).**
9. Meeting all these conditions, there will not be any extra charge by the vendor to LEUSD other than the fees paid by LEUSD for any subsequent maintenance agreement(s).
10. In order to maintain district unwarranted PBX systems, all interested vendors must provide valid Nortel certification for providing end-to-end service on said PBX systems. Said certificates will be validated by Nortel before acceptance.
11. Extended warranty proposals for Nortel systems must contain but not be limited to:
 - a. Trip Charges
 - b. Hourly rate
 - c. Time and material rates
 - d. Training (if necessary)
 - e. OTM and Call Pilot breakdowns
12. Vendors proposing Nortel systems warranty may include a comprehensive plan, but must break out prices by Eligible and Non-eligible items based on USAC and SLD guidelines.
13. Vendor proposal in response to this RFP will be incorporated into the final agreement between LEUSD and the selected vendor. The submitted proposal at a minimum should include the following sections (plus complete **Appendix B and C**):
 - a. Services Rendered and Scope of work
 - b. Itemized Pricing
 - c. Exclusions
 - d. LEUSD and vendor responsibilities
 - e. Fees and Payments
 - f. Legal Terms and Conditions

Section III - Evaluation Factors for Award:



Any award to be made pursuant to this RFP will be based upon the proposal with appropriate consideration given to operational, technical, cost and management requirements. Evaluations of offers will be based upon the vendor's responsiveness to the RFP and the total price quoted for all the items covered by the RFP. The following elements will be the primary considerations in evaluating all submitted proposals and in the selection of a vendor:

1. Overall cost of the vendor's proposal. LEUSD may, at their discretion and without explanation to the prospective vendor's, at anytime chose to discontinue this RFP without obligation to such prospective vendors.
2. LEUSD's current contractual agreements with current vendors.
3. Completion of all required responses in the correct format.
4. The extent to which the vendor's proposed solution fulfills LEUSD's stated requirements as set out in this RFP.
5. An assessment of the vendor's ability to deliver the indicated service in accordance with the specifications set out in this RFP.
6. The vendor's stability, experiences and record of past performance in delivering such services.
7. Availability of sufficient high quality vendor personnel with the required skills and experience for the specific approach.
8. Vendor's acceptance of LEUSD's contractual terms and conditions, if applicable.

	Appendix A		
Butterfield Elementary School 16275 Grand Ave. Lake Elsinore, California 92530 Tract Code: 0464.01	Railroad Canyon Elementary School 1300 Mill St Lake Elsinore, California 92530	Canyon Lake Middle School 33005 Canyon Hill Road Lake Elsinore, California 92532	Temescal Canyon High School 28755 El Toro Road Lake Elsinore, California 92532
Cottonwood Canyon Elementary School 32100 Lost Road Lake Elsinore, California 92532 Tract Code: 0464.04	Ronald Reagan Elementary School 35445 Porras Street Wildomar, CA 92595 Tract Code: 0432.08	David A. Brown Middle School 21861 Grand Avenue Wildomar, California 92595	Ortega Continuation High School 520 Chaney Street Lake Elsinore, CA 92530
Donald Graham Elementary School 35450 Frederick Street Wildomar, CA. 92595	Rice Canyon Elementary School 29535 Westwind Drive Lake Elsinore, CA 92530	Elsinore Middle School 1203 W. Graham Lake Elsinore, California 92532	Alternative Education Center Gordon Keifer IS 1405 Education Way Lake Elsinore, CA 92530
Elsinore Elementary School 512 West Sumner Street Lake Elsinore, CA 92530	Tuscany Hills Elementary School 23 Ponte Russo Lake Elsinore, California 92532	Lakeland Village Middle 1873 Grand Avenue Lake Elsinore, California 92530	Lake Elsinore USD 545 Chaney Street Lake Elsinore, CA 92530
Jean Hayman Elementary School 21440 Lemon St Wildomar, Ca 92595	William Collier Elementary School 20150 Mayhall Drive Wildomar, CA 92595	Terra Cotta Middle School 29291 Lake St. Lake Elsinore, California 92530	Transportation 21641 Bundy Canyon Road Wildomar, CA 92595
Luiseno Elementary School 13500 Mountain Road Corona, CA 92883	Wildomar Elementary School 21575 Palomar Road Wildomar, CA 92595	Elsinore High School 21800 Canyon Drive Wildomar, California 92595	
Machado Elementary School 15150 Joy Street Lake Elsinore, Ca. 92530	Withrow Elementary School 30100 Adelo St. Lake Elsinore, California 92530	Lakeside High School 33693 Riverside Drive Lake Elsinore, CA 92530 Tract Code: 0464.01	

	Appendix B				
	Lake Elsinore Unified School District (Existing)				
	This is NOT an Order				
Telecommunications:	Unit Description	Quantity	Capacity	Non-reoccurring Charges	Reoccurring Charges
	Centrex Lines	560			
	T1 Lines	30	Full CRI		
	DS3	3	Full CRI		
	ATM (Internet Access)	1	10mb		
	PRI	10			
	DID Blocks	10	100		
	Local Usage Charges				
	Long Distance Charges				
	900/976 Charges/Blocking				
	911/E911 Trunks/Lines				
	Alarm Telephone Lines				
	Conferencing Services				
	Custom Calling Services				
	Direct inward dialing				
	Directory Assistance Charges				
	Directory Listing				
	Distance Learning Circuits				
	Fax Machine Line				
	Homework hotline Service				
	Inside Wire maintenance Plan				
	ITV				
	Local Measured Service				
	Message Rate Service				
	MAN				
	Network Access Register				
	Phone Calling Cards				
	PIC Chance Charge				
	POTS				
	Trunk				
	Video Services				
	WAN Services				
Internet Access:					
	Internet Service	1			
	DNS	1			
	E-Mail Account Fees				
	E-Mail Service				
	WAN				
Existing Equipment:					
	Cisco 7000 Series Router	2	6		
	Cisco 3700 Series Router	3	6		
	Cisco 2600 Series Router	4	2		
	Cisco 2500 Series Router	12	2		
	Cisco Pix Firewall 525	2			
	Nortel Option 61	1			
	Nortel Option 11	11			
	Various "Key" Systems	15			
	Intercoms	23			
Maintenance:					

Appendix C					
Lake Elsinore Unified School District (Future)					
This is NOT an Order					
Telecommunications:	Unit Description	Quantity	Capacity	Non-reoccurring Charges	Reoccurring Charges
	Centrex Lines	50			
	T1 Lines	5	Full CRI		
	DS3	1	Full CRI		
	ATM	0	15mb		
	PRI	15			
	Long Distance Services	50			
	900/976 Charges/Blocking				
	911/E911 Trunks/Lines				
	Alarm Telephone Lines				
	Conferencing Services				
	Custom Calling Services				
	Direct inward dialing				
	Directory Assistance Charges				
	Directory Listing				
	Distance Learning Circuits				
	Fax Machine Line				
	Homework hotline Service				
	Inside Wire maintenance Plan				
	ITV				
	Local Measured Service				
	Message Rate Service				
	MAN				
	Network Access Register				
	Phone Calling Cards				
	PIC Chance Charge				
	POTS				
	Trunk				
	Video Services				
	WAN Services				
Internet Access:					
	Internet Service	1			
	DNS	1			
	E-Mail Account Fees				
	E-Mail Service				
	WAN				
	Web Hosting				
Existing Equipment:					
	Cisco 7000 Series Router	0	0		
	Cisco 3700 Series Router	3	3		
	Cisco 2600 Series Router	0			
	Cisco 2500 Series Router	0			
	Cisco Pix Firewall 525	0			
	Nortel Option 61	1			
	Nortel Option 11	11			
	Various "Key" Systems	0			
	Intercoms	23			

Exhibit E

Lake Elsinore Unified School District
E-Rate Year 2007 – 2008



Request for Proposal:
Telecommunications and Internet Access
Instructions to Vendors

**Request for Proposal Project Number:
LEUSD Yr 2007 - 2008 Telco/LD/LS/Internet Access**

Award of this Request for Proposal (RFP) is contingent upon the approval of funding from the Schools and Libraries Universal Service Administrative Company. The successful vendor agrees to bill and receive a portion of the payment for the provisions of goods and services described herein directly from the Universal Service Administrative Company ("USAC"), and/or the Schools and Libraries Division ("SLD"). Lake Elsinore Unified School District (LEUSD) and the successful vendor will act in a reasonable manner and comply with any and all Schools and Libraries Universal Service Fund Program requirements. The selected vendor agrees to abide by all applicable policies of the Universal Service Discount program. The vendor will include its Service Provider Information Number (SPIN) in its proposal. Contract will take effect on July 1, 2007, and continue through June 30, 2008, unless a multi-year contract is awarded. Should an extension be permitted by the Schools and Libraries Service Administrative Company the contract will be extended accordingly.

Section I - Conditions:

1. Proposals must be received by 11:59 PM local time (PST) on **Tuesday, January 16, 2007** by e-mail to the following address: erate@leusd.k12.ca.us or mailed to LEUSD, Attn: ITS, 545 Chaney Street, Lake Elsinore, CA 92530. The provided email is for E-rate proposals only. Any other use, unauthorized propagation or use for solicitation unrelated to Funding Year 2007-2008 Erate of said email will result in legal action.
2. **Proposals received after the exact time and date noted will NOT be considered for the bid process.**
3. LEUSD will not be responsible for any proposal that:
 - a. Does not indicate the RFP reference, closing date and proponent's name;
 - b. Is sent to any e-mail or mailing address other than that provided above;
 - c. Proponents may not amend their proposal after the closing date and time, unless as a result of negotiations commenced by LEUSD, but may withdraw their proposal at any time;
 - d. E-mail transmitted proposals will be accepted under the following conditions:
 - i. the proposal is received before the submission deadline at the e-mail address stated;
 - ii. LEUSD will not accept liability for any claim, demand or other actions for any reason should the e-mail transmission be interrupted, not received in its entirety, received after stated closing time and date, received by any other e-mail system other than that stated herein, or for any other reasons.
4. The vendor must bid separately on each item, unless otherwise requested herein, and shall indicate on **Appendix B, C, and D** the unit price for each item listed and the total price for furnishing the total quantity of each item. All prices and notations must be typed or written in ink. Bids shall not be written in pencil. Mistakes may be crossed out and corrections inserted adjacent, but the correction shall be initialed in ink by the person signing the proposal. No corrections can be made after the closing time for bids.
5. All questions or inquiries concerning this RFP must be submitted to the e-mail address provided above no later than two (2) business days prior to the proposal deadline. Verbal responses to any enquiry cannot be relied upon and are not binding on either party.
6. If a contract is to be awarded as a result of this RFP, it shall be awarded to the proponent who is responsible and whose proposal provides the best potential value to LEUSD. Responsible means the capability in all respects to perform fully the contract requirements and the integrity and reliability to assure performance of the contract obligations.



7. Prices to remain firm through SLD approval, execution, and duration of the proposed contract. In the event of a price decrease for service or from the manufacture, said decrease shall be passed on to the District and documented with new price sheet sent to Lake Elsinore USD Business Office.
8. Any prospective vendor, who contacts any Lake Elsinore USD Board of Education member or school site during the RFP process, will be disqualified from consideration for the RFP award.
9. The Board of Education reserves the right to reject any and all bids/proposals, or any or all items of any bid/proposal.
10. In order to preserve uniformity and to facilitate the award of contracts, you must complete **Appendix B and C** along with the rest of your bid/proposal. It is acceptable to modify this form format for clarity but original form must be attached and changes indicated.
11. Notice in writing to a proponent and the subsequent execution of a written agreement shall constitute the making of a contract. No proponent shall acquire any legal or equitable rights or privileges whatever until the contract is signed.
12. The contract will contain the relevant provisions of this RFP and of the successful proposal, as well as such other terms as may be mutually agreed upon, whether arising from the proposal or as a result of any negotiations prior or subsequent there to.
13. In the event of any inconsistency between this RFP, and the ensuing contract, the contract shall govern considering all points of the RFP are met.
14. LEUSD has the right to cancel this RFP at any time and to reissue it for any reason whatsoever without incurring any liability and no proponent will have any claim against LEUSD as a consequence.
15. Any amendments made by LEUSD to the RFP will be issued in writing and sent to all that have received the documents pursuant to the acknowledgement of participation.
16. LEUSD is not liable for any costs of preparation or presentation of proposals.
17. An evaluation committee will review each proposal. LEUSD reserves the exclusive right to determine the qualitative aspects of all proposals relative to the evaluation criteria.
18. The proposal and accompanying documentation submitted by the proponents are the property of LEUSD and will not be returned.
19. The vendor's proposal and any contract entered into are subject to all applicable statutes of the United States and/or of the State of California and all applicable regulations and orders of the Federal and/or State governments now in effect or which shall be in effect during the period of such contract. To include all LEUSD policies and regulations.
20. In the event that the awarded vendor is prevented from making delivery or otherwise performing on time as specified in the contract by fire, flood, earthquake, labor or transportation problems, war, acts of government, or any other similar cause commonly known as an act of God, which is not the fault of the vendor, the vendor shall not be required to deliver or perform, subject to the following requirements:
 - a. The vendor shall send written notice to the District of the vendor's inability to perform in accordance with the contract. The notice shall contain all facts which show the condition which prevents performance.
 - b. The vendor shall send such notice as soon as possible but in no event later than the fifth (5th) day following the date of issuance of a purchase order by the District or no later than the date specified in the contract for delivery or other performance, whichever is applicable.
 - c. The District may cancel the contract or purchase order, entirely or in part.
21. The vendor, in submitting its proposal certifies that it is an Equal Opportunity Employer, and certifies that it is in compliance with the Civil Rights Act of 1964, the State Fair Employment Practice Act, and all other applicable Federal and State laws and regulations relating to equal opportunity employment, including Executive Order No. 11246 of September 24, 1965.

22. **Any charges for non-eligible items initially labeled by providing vendor as eligible will be the sole responsibility of the providing vendor. LEUSD will not be responsible for charges awarded vendor deems as eligible if USAC and SLD maintain ineligibility.**
23. The Vendor shall not make any delivery or otherwise attempt to perform under the contract except on the basis of issuance by the District of a new purchase order or other written instruction.

Section II - Proposal Requirements and Project Scope

The purpose of this RFP is to solicit from qualified service providers the installation, maintenance and support of the existing telecommunication, data lines, Internet service and access, long distance and limited email services. **Complete reconfigurations (such as wireless WAN) systems will not be accepted.** RFP must include bid prices for the entire scope containing the below information:

1. System infrastructure located throughout LEUSD (**Appendix A**).
2. Vendor agrees to keep all scheduled equipment/infrastructure in good and operating condition during standard business office hours. These hours are from 7:00 am – 4:30 pm Monday – Friday in a normal working business day.
3. Major interruptions of services or emergencies (defined as a down data line, phone line, Internet service or long distance service affecting more than 30% of the users at a given site and/or district wide) are to be responded on-site within four (4) hours of notification.
4. All other services interruptions within twenty four (24) hours of notification.
5. Any vendor required scheduled maintenance shall occur after district business hours unless agreed upon by LEUSD and vendor.
6. All infrastructure for Wide Area and Local Area Network connectivity must be compatible with LEUSD current equipment (**Appendix B**).
7. Interested parties must bid on items listed in **Appendix B, C and D** for existing and future capabilities.
8. Vendor must maintain full Committed Information Rate (CIR) for all data lines. **Frame Relay and Wireless will NOT be considered as acceptable substitution(s).**
9. Meeting all these conditions, there will not be any extra charge by the vendor to LEUSD other than the fees paid by LEUSD for any subsequent maintenance agreement(s).
10. Vendor proposal in response to this RFP will be incorporated into the final agreement between LEUSD and the selected vendor. The submitted proposal at a minimum should include the following sections (plus complete **Appendix B and C**):
 - a. Services Rendered and Scope of work
 - b. Itemized Pricing
 - c. Exclusions
 - d. LEUSD and vendor responsibilities
 - e. Fees and Payments
 - f. Legal Terms and Conditions
 - g. Non-eligible services/equipment as defined by USAC/SLD must be listed separately.

Section III - Evaluation Factors for Award:

Any award to be made pursuant to this RFP will be based upon the proposal with appropriate consideration given to operational, technical, cost and management requirements. Evaluations of offers will be based upon the vendor's responsiveness to the RFP and the total price quoted for all the items covered by the RFP. The following elements will be the primary considerations in evaluating all submitted proposals and in the selection of a vendor:

1. Overall cost of the vendor's proposal. LEUSD may, at their discretion and without explanation to the prospective vendor's, at anytime chose to discontinue this RFP without obligation to such prospective vendors.
2. LEUSD's current contractual agreements with current vendors.
3. Completion of all required responses in the correct format.
4. The extent to which the vendor's proposed solution fulfills LEUSD's stated requirements as set out in this RFP.
5. An assessment of the vendor's ability to deliver the indicated service in accordance with the specifications set out in this RFP.
6. The vendor's stability, experiences and record of past performance in delivering such services.
7. Availability of sufficient high quality vendor personnel with the required skills and experience for the specific approach.
8. Vendor's acceptance of LEUSD's contractual terms and conditions, if applicable.

Appendix A

Butterfield Elementary School	Cottonwood Canyon Elementary School	Donald Graham Elementary School	Earl Warren Elementary School
16275 Grand Ave.	32100 Lost Road	35450 Frederick Street	41221 Rosetta Canyon Drive
Lake Elsinore, California 92530	Lake Elsinore, California 92532	Wildomar, CA. 92595	Lake Elsinore, CA 92532
Tract Code: 0464.01	Tract Code: 0464.04		
Elsinore Elementary School	Jean Hayman Elementary School	Luiseno Elementary School	Machado Elementary School
512 West Sumner Street	21440 Lemon St	13500 Mountain Road	15150 Joy Street
Lake Elsinore, CA 92530	Wildomar, Ca 92595	Corona, CA 92883	Lake Elsinore, Ca. 92530
Railroad Canyon Elementary School	Ronald Reagan Elementary School	Rice Canyon Elementary School	Tuscany Hills Elementary School
1300 Mill St	35445 Porras Street	29535 Westwind Drive	23 Ponte Russo
Lake Elsinore, California 92530	Wildomar, CA 92595	Lake Elsinore, CA 92530	Lake Elsinore, California 92532
	Tract Code: 0432.08		
William Collier Elementary School	Wildomar Elementary School	Withrow Elementary School	Canyon Lake Middle School
20150 Mayhall Drive	21575 Palomar Road	30100 Adelo St.	33005 Canyon Hill Road
Wildomar, CA 92595	Wildomar, CA 92595	Lake Elsinore, California 92530	Lake Elsinore, California 92532
David A. Brown Middle School	Elsinore Middle School	Lakeland Village Middle	Terra Cotta Middle School
21861 Grand Avenue	1203 W. Graham	18730 Grand Avenue	29291 Lake St.
Wildomar, California 92595	Lake Elsinore, California 92532	Lake Elsinore, California 92530	Lake Elsinore, California 92530
Elsinore High School	Lakeside High School	Temescal Canyon High School	Ortega Continuation High School
21800 Canyon Drive	33693 Riverside Drive	28755 El Toro Road	520 Chaney Street
Wildomar, California 92595	Lake Elsinore, CA 92530	Lake Elsinore, California 92532	Lake Elsinore, CA 92530
	Tract Code: 0464.01		
Alternative Education Center	Lake Elsinore USD	Transportation	
Gordon Keifer IS	545 Chaney Street	21641 Bundy Canyon Road	
1405 Education Way	Lake Elsinore, CA 92530	Wildomar, CA 92595	
Lake Elsinore, CA 92530			

	Appendix B				
	Lake Elsinore Unified School District (Existing)				
	This is NOT an Order				
Telecommunications:	Unit Description	Quantity	Capacity	Non-reoccurring Charges	Reoccurring Charges
	Centrex Lines	560			
	T1 Lines	37	Full CIR		
	DS3	3	Full CIR		
	ATM (Internet Access)	1	10MB		
	PRI	10			
	DID Blocks	10	100		
	Local Usage Charges				
	Long Distance Charges				
	900/976 Charges/Blocking				
	911/E911 Trunks/Lines				
	Alarm Telephone Lines				
	Conferencing Services				
	Custom Calling Services				
	Direct inward dialing				
	Directory Assistance Charges				
	Directory Listing				
	Distance Learning Circuits				
	Fax Machine Line				
	Homework hotline Service				
	Inside Wire maintenance Plan				
	ITV				
	Local Measured Service				
	Message Rate Service				
	MAN				
	Network Access Register				
	Phone Calling Cards				
	PIC Chance Charge				
	POTS				
	Trunk				
	Video Services				
	WAN Services				
Internet Access:					
	Internet Service	1			
	DNS	1			
	E-Mail Account Fees	1			
	E-Mail Service	1			
Existing Equipment:					
	Cisco 7000 Series Router	2	6		
	Cisco 3700 Series Router	3	6		
	Cisco 2600 Series Router	4	2		
	Cisco 2500 Series Router	12	2		
	Cisco Pix Firewall 525	2			
	Core Pro Curve Networking Switches	28			

Appendix C					
Lake Elsinore Unified School District (Future)					
This is NOT an Order					
Telecommunications:	Unit Description	Quantity	Capacity	Non-reoccurring Charges	Reoccurring Charges
	Centrex Lines	50			
	T1 Lines	5	Full CIR		
	DS3	1	Full CIR		
	ATM	0	15MB		
	PRI	15			
	Long Distance Services	50			
	900/976 Charges/Blocking				
	911/E911 Trunks/Lines				
	Alarm Telephone Lines				
	Conferencing Services				
	Custom Calling Services				
	Direct inward dialing				
	Directory Assistance Charges				
	Directory Listing				
	Distance Learning Circuits				
	Fax Machine Line				
	Homework hotline Service				
	Inside Wire maintenance Plan				
	ITV				
	Local Measured Service				
	Message Rate Service				
	MAN				
	Network Access Register				
	Phone Calling Cards				
	PIC Chance Charge				
	POTS				
	Trunk				
	Video Services				
	WAN Services				
Internet Access:					
	Internet Service	1			
	DNS	1			
	E-Mail Account Fees	1			
	E-Mail Service	1			

Appendix D

The Lake Elsinore Unified School District (LEUSD) is requesting proposals for services to provide a high-speed Wide Area Network (WAN) solution for both phones and data. LEUSD is looking for a managed fiber optic network service which connects all school sites within the district back to main district office at 545 Chaney Street, Building C, Lake Elsinore CA, 92530. This service will use fiber optic cables and provide bandwidth of 1 Gbps to each school site. The service provider will hand-off a 1000Base-SX, 1000Base-T or 10/100/1000Mbps connection to the district. For Gigabit Ethernet terminations, the service provider will supply the district with Gigabit Interface Converter (GBIC) that will connect directly into the district-provided Pro Curve switch.

Lake Elsinore Unified School District is soliciting qualified contractors to submit an installation and ongoing service bid for (including, but not limited to) equipment racks, digital equipment, data cabling, and associated termination equipment as required. All equipment included in this request will be owned and maintained by the awarded service provider with no option for transfer of ownership to the lessee.

This project is entirely contingent upon available funding from the federal E-Rate program (Schools and Libraries Division) and the Lake Elsinore Unified District and may or may not be undertaken at its sole discretion. In addition, LEUSD will require that the awarded service provider ensure that all eligible components of service are filed with the California Public Utilities Commission (CPUC) and are eligible for the California Teleconnect Fund (CTF) discount.

This project encompasses the following:

- The installation of secure and dedicated fiber optic connectivity between the Lake Elsinore Unified School District, 545 Chaney Street, Building C and all sites listed in Appendix A.
- The dedicated fiber shall connect the district office with each of the LEUSD school sites.
- The district office shall have a minimum data connection to each of the 26 school sites of 1 Gigabit (1000Mbps).
- The vendor is responsible to obtain all necessary right of ways necessary to this project.
- During the term of this contract, any changes in the routing of the fiber cable due to city infrastructure changes and/or requirements (street widening, new underground cabling requirements, etc.) will be the responsibility of the vendor at no expense to the District.
- In the event of loss of communication to any site, the repair shall start within 4 hours of the service call from the district. The maximum time of repair will be 24 hours.
- The minimum of a five year contract shall be provided. Future contracts and/or renewals will be at the discretion of the Lake Elsinore Unified School District
- Although this is a five year contract, include the monthly costs.

Appendix D

SCOPE OF PROJECT:

Please provide the installation (one time) and monthly (ongoing) cost bids for this 5 year project as follows:

- One Gigabit (1000Mbps) fiber optic (Ethernet capable) connectivity from the district office to the sites listed in Appendix A.
- The Chaney Street district office is to serve as the central point for the network, 545 Chaney Street, Lake Elsinore, CA 92530.
- Please include the one time installation costs and ongoing monthly costs for all sites.
- Include any non-eligible services/equipment prices as defined by USAC/SLD separately or in a bolded, highly visible marked method within your bid proposal.
- The service provider will hand-off a 1000Base-SX, 1000Base-T or 10/100/1000Mbps connection to the district. For Gigabit Ethernet terminations, the service provider will supply the district with Gigabit Interface Converter (GBIC) that will connect directly into the district provided Pro Curve switch.
- An uptime guarantee of 99.9% shall be provided on a 24x7 basis average over each seven-day period.
- The circuits shall be capable of carrying multiple data services such as computer networks, voice over IP, digital video, etc.
- All vendor equipment installed shall be under repair maintenance at no cost to LEUSD for the life of the contract agreement.
- The project cannot commence before July 1, 2007 and will begin upon receipt of the Funding Commitment decision letter from the Schools and Libraries Division.
- The vendor shall provide three references consisting of similar scope and work.

Exhibit F

THOMPSON, COBB, BAZILIO & ASSOCIATES, PC
Certified Public Accountants and Management, Systems, and Financial Consultants

■ Main Office:

1101 15th Street, N.W.
Suite 400
Washington, DC 20005
(202) 737-3300
(202) 737-2684 Fax

□ Regional Office:

100 Pearl Street
14th Floor
Hartford, CT 06103
(860) 249-7246
(860) 275-6504 Fax

□ Regional Office:

21250 Hawthorne Boulevard
Suite 500
Torrance, CA 90503
(310) 792-7001
(310) 792-7004 Fax

January 13, 2009

Lake Elsinore Unified School District
Attn: Dr. Frank W. Passarella- Superintendent
545 Chaney Street
Lake Elsinore, CA 92530

Dear Dr. Frank W. Passarella:

Thompson, Cobb, Bazilio & Associates, PC (TCBA) has been engaged by the Universal Service Administrative Company's (USAC) Internal Audit Division to assist in its examination of recipients of Schools & Libraries (S&L) Support Mechanism funds. We plan to conduct a compliance attestation examination of the Lake Elsinore Unified School District; Beneficiary Number 143749 located in Lake Elsinore, CA during February 2009. It is anticipated that fieldwork for the examination will take approximately 2 to 4 weeks; however, the efficiency of the examination will depend on the availability of your staff and the condition of the documentation made available prior to and during the course of the examination.

The examination will cover disbursements from the Universal Service Fund during the fiscal year ended June 30, 2008, related to the following:

FUNDING YEAR(s)	FORM 471 NO.	FRN(s)	DOLLAR DISBURSED
2006	513324	1423456	22,343.16
2006	513324	1423335	53,881.04
2007	566516	1563982	366,556.97
2007	566516	1564329	4,347.18

A compliance attestation examination requires management of your organization to sign a letter acknowledging its responsibility for compliance with applicable requirements of 47 C.F.R. Sections 54.500 through 54.523 of the Federal Communications Commission's ("FCC") Rules and Regulations for Universal Service Support for Schools and Libraries, as amended, and related FCC Orders ("Rules and Orders"); and to make specific assertions relative to your organization's compliance with those Rules and Orders. Under Government Auditing Standards and AICPA Attestation Standards (Section AT 601), your organization should also perform an evaluation of the organization's compliance with the Rules and Orders to support your ability to make the assertions. A draft assertion letter is attached. Also, a separate management representation letter will also be required to be signed by management at the end of the examination. The form of that letter will be discussed when the engagement commences.

Our examination is being managed by the following personnel:

NAME	POSITION	PHONE NUMBER	EMAIL
<i>Barbara Hutto</i>	Lead Engagement Partner	202-778-3444	<i>bhutto@tcba.com</i>
<i>Marty Ferber</i>	Engagement Director	202-778-3435	<i>mferber@tcba.com</i>
<i>Chris Boyd</i>	Engagement Manager	202-778-3466	<i>cboyd@tcba.com</i>
<i>Ron Viereck</i>	On-Site Manager	562-335-1689	<i>Rviereck562@charter.net</i>

Our On-Site Manager will contact you to discuss the specifics of our visit to your location.

The examination will focus on the eligibility of products and services, the accuracy of discount calculations, the timely approval of technology plans, the service provider selection process, the documentation supporting the reimbursements, the location and physical identification of any equipment acquired, and other related areas. Attached are two lists of documents that we will need to perform the examination.

We are required to gain an understanding of your internal control environment relevant to your management of the Schools and Libraries program. Attached to this letter are internal control questionnaires designed to provide a basis for gaining that understanding. These questionnaires need to be completed and returned to us as part of the documents requested from you within three weeks of your receipt of this letter.

In addition, for us to perform the examination efficiently and effectively, your assistance in providing the following support will be appreciated:

- Attachment A is a draft assertions letter that will be required while we are on site.
- Attachment B are requested documents to arrive at the following address within **three weeks of receipt of this letter.**

Ron Viereck
4346 La Cara Street
Long Beach, CA 90815

Or, you may send them electronically to rviereck562@charter.net or by fax to 301-576-3626.

- The remainder of the requested documents (see Attachment C) available to the examiners upon their arrival at your location.
- Office space and Internet connectivity for three examiners during their visit to your location. If possible, access to the office space should be for 8 - 10 hours each day.

- During the visit to your location, notice of any days that the building will be closed, due to holidays or any other reason.
- Advice on the dress code for your office.

Please recognize that TCBA has equal access to request and view documents as does the USAC Internal Audit Department. Announcement letters from FCC and USAC are attached. If you have any questions about this please contact Wayne Scott, Vice President/Internal Audit at 202-776-0200.

We will contact you directly to inform you of the date we are planning to visit your location. At that time, we will discuss the attached document requests so that any questions/issues can be addressed before the examiners are on site. After the examination team arrives, they will conduct a “kick-off” meeting to discuss the examination with management and the key individuals involved in your E-rate process. At the completion of the examination, we will conduct a closing meeting to discuss the results of the examination and to receive your signed representation letter.

The results of our work, as well as your comments received during the final meeting and on a draft of our report, will be presented in a draft report to USAC and the FCC OIG. Upon review and approval of the report by USAC Management and the FCC OIG, the report will be distributed to the appropriate parties.

The following URL provides some additional information to assist your understanding of this examination <http://www.usac.org/sl/about/audits/default.aspx>.

If there are any matters or issues that you would like to make us aware of, or if you have any questions or concerns, please feel free to use my contact information as listed above.

Sincerely,



Martin M Ferber

Principal

Thompson, Cobb, Bazilio & Associates

Attachments:

- A. Draft Assertions Letter to be completed and provided to TCBA after the entrance conference.
- B. List of Documentation to be Provided to TCBA within Three Weeks of Receipt of this Letter
- C. List of Review Documentation to be Provided Upon TCBA Arrival
- D. FCC Announcement Letter
- E. USAC Announcement Letter
- F. Internal Controls Questionnaire
- G. Service Provider Bill & Reimbursement Reconciliation

ATTACHMENT A

DRAFT ASSERTIONS LETTER TO BE SIGNED AND RETURNED TO TCBA DURING THE FIELD VISIT

NOTES TO DRAFT ASSERTIONS LETTER

- The references to applicable periods accompanying each assertion, highlighted in yellow, are included only for use in determining applicable assertions and should be removed before the letter is signed.
- The check boxes before each assertion currently reflect a typical set of applicable assertions for FY 2005 or later. However, the preparer needs to carefully assess the circumstances of each Beneficiary and be certain to have the assertions in the signed letter properly marked relative to that Beneficiary and all FYs included in the scope of the letter.
- The Beneficiary should provide TCBA an assertions letter on Beneficiary letterhead and signed as indicated.

A draft in Microsoft Word is attached to the notification email to assist you in preparing the letter.

To Be Prepared on Beneficiary Letterhead

**Report of Management on Compliance with Applicable Requirements of
47 C.F.R. Section 54 of the Federal Communications Commission's Rules
and Regulations and Related Orders**

Management of [BENEFICIARY NAME] (the "District" "School" or "Library") is responsible for ensuring the District's compliance with applicable requirements of 47 C.F.R. Sections 54.500 through 54.523 of the Federal Communications Commission's ("FCC") Rules and Regulations for Universal Service Support for Schools and Libraries, as amended, and related FCC Orders.

Management has performed an evaluation of the District's compliance with the applicable requirements of 47 C.F.R. Section 54.500 through 54.523, as amended, and related FCC Orders with respect to disbursements made from the Universal Service Fund during the period July 1, 2007 through June 30, 2008 on our behalf and the related Funding Year(s) 200X(and 200Y) application(s) for funding and service provider selection(s) related to the Funding Request Numbers ("FRNs") for which such disbursements were made. Based on this evaluation, we assert that as of [DATE], 200Z, the District complied with all applicable requirements of 47 C.F.R. Sections 54.500 through 54.523, as amended, and related FCC Orders in all material respects.

The District used [SERVICE PROVIDER NAME(S) or "various organizations"] as its service provider(s) relative to the FRNs for which disbursements were made during the period July 1, 2007 through June 30, 2008. In addition to providing the goods and/or services for which the disbursements were made relative to those FRNs, [SERVICE PROVIDER NAME(S) or "those service providers"] performed the following specific functions to qualify as a service provider for the Schools and Libraries Support Mechanism and on behalf of the District, as applicable:

- Preparation and submission of FCC Form 473, Service Provider Annual Certification Form
- Preparation and submission of FCC Forms 474, Service Provider Invoice
- Receipt of disbursements from the Universal Service Fund as requested by FCC Forms 472, Billed Entity Applicant Reimbursement, or FCC Forms 474, Service Provider Invoice
- Reimbursement to the District of disbursements from the Universal Service Fund as requested by FCC Forms 472, Billed Entity Applicant Reimbursement

The District has obtained and relied upon assurance from [SERVICE PROVIDER NAME(S) or "our service providers"] to verify that controls and procedures relating to these assertions have been established and maintained by [SERVICE PROVIDER NAME(S) or "those service providers"] in accordance with all applicable requirements of 47 C.F.R. Sections 54.500 through 54.523, as amended, and related FCC Orders.

NOTE: The checkbox before each assertion indicates whether that assertion is applicable.

The *(School, District or Library)* represents the following assertions per the FCC Rules and Regulations, as amended, and related FCC Orders (which are indicated as “applicable” and are identified herein with each assertion) with respect to disbursements made from the Universal Service Fund during the year ended June 30, 2008 on our behalf and the related Funding Year(s) 2005, 2006 or 2007.

Application(s) for funding and service provider selection(s) related to the FRNs for which such disbursements were made:

A. Record Keeping – The *(School, District or Library)*:

1. ☐ maintained for its purchases of telecommunications and other supported services at discounted rates the kind of procurement records that it maintains for other purchases. (Section 54.516 (a) which was effective from July 17, 1997 through October 12, 2004) [Applicable to service provider selection documentation prior to FY 2005 and purchasing documentation (such as service provider bills) for products and services delivered before October 13, 2004]
2. ☐ retained all documents, to date, related to the application for, receipt, and delivery of discounted telecommunications and other supported services, to date. Also, any other document that demonstrated compliance with the statutory or regulatory requirements for the schools and libraries mechanism was retained. (Sections 54.516 (a) (1) and 54.504 (c) (1) (x) which were effective as of October 13, 2004 and require a five-year retention period for such documents) [Applicable fully to FY 2005 and subsequent FYs and for the receipt and delivery of products and services that took place after October 12, 2004 irrespective of FY]
3. ☐ maintained, to date, asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment. (Section 54.516 (a) which was applicable from March 11, 2004 to October 12, 2004 and Section 54.516 (a) (1) which was effective as of October 13, 2004, both of which require maintenance of such records for a period of five years after purchase) [Only applicable if the FRN(s) include internal connections services other than maintenance and the delivery of the products took place after March 10, 2004]

B. Application Matters – The *(School or District)*:

1. ☐ requested discounts from the Universal Service Fund for telecommunications and other supported services only for schools that meet the statutory definition of elementary and secondary schools found under section 254(h) of the Communications Act of 1934, as amended in the No Child Left Behind Act of 2001, 20 U.S.C. 7801(18) and (38), do not operate as for-profit businesses, and do not have endowments exceeding \$50 million. (Section 54.504 (b) (2) (i) which was effective as of October 13, 2004 and superseded Section 54.504 (b) (2) (i) which was effective as of February 12, 1998; as well as Section 54.501 (b), as revised, which was originally effective as of July 17, 1997) [Applicable for all funding years]

2. ☐ submitted a completed FCC Form 470, including the required certifications, signed by the person authorized to order telecommunications and other supported services. (Section 54.504 (b) (2), as revised, which was originally effective as of July 17, 1997) [Applicable for all funding years]
3. ☐ had the resources required to make use of the services requested, or such resources were budgeted for purchase for the current, next or other future academic years, at the time the FCC Form 470 was filed. (Section 54.504 (b) (1), as revised, which was originally effective as of July 17, 1997; and Section 54.504 (b) (2) (vi) which was effective as of October 13, 2004 and superseded Section 54.504 (b) (2) (v) which was effective as of July 17, 1997) [Applicable for all funding years]
4. ☐ had a technology plan for using the services requested at the time of filing the FCC Form 470 that had been or would be approved by its state or other authorized body prior to the receipt of the requested services. (Sections 54.504 (b) (2) (iii) and (iv); as well as 54.508 (c) which were effective as of October 13, 2004) [Applicable for FY 2005 and subsequent FYs if the Beneficiary received discounted services other than basic telephone service]
5. ☐ the technology plan for using the services requested in the FCC Form 470 included the following elements: (Section 54.508 (a) which was effective as of October 13, 2004) [Applicable for FY 2005 and subsequent FYs]
 - a) a statement of goals and a strategy for using telecommunications and information technology to improve education;
 - b) a professional development strategy to ensure that the staff understands how to use these new technologies to improve education;
 - c) an assessment of the telecommunication services, hardware, software, and other services that will be needed to improve education;
 - d) a budget sufficient to acquire and support the non-discounted elements of the plan: the hardware, software, professional development, and other services that will be needed to implement the strategy; and
 - e) an evaluation process that enables the school to monitor progress toward the specific goals and make mid-course corrections in response to new developments and opportunities as they arise.
6. ☐ had a technology plan that had been certified by its state, USAC or an independent entity approved by the FCC at the time of filing the FCC Form 470. (Sections 54.504 (b) (2) (vii) which was effective from July 17, 1997 to October 12, 2004) [Applicable for funding years prior to FY 2005]
7. ☐ accurately determined its level of poverty, for use in determining its available discount rate, by using the percentage of its student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism in the public school district in which they are located. (Section 54.505 (b) which was effective as of July 17, 1997) [Applicable for all funding years]
8. ☐ accurately applied the approved discount matrix, with the correct consideration of urban or rural location, to its determined level of poverty to

set its discount rate to be applied to eligible goods and/or services. (Section 54.505 (c), as revised, which was originally effective as of July 17, 1997) [Applicable for all funding years]

9. ☐ submitted a completed FCC Form 471 only after signing a contract for eligible goods and/or services. (Section 54.504 (c) which was effective as of February 12, 1998) [Applicable for all funding years]
10. ☐ requested, and funds were disbursed by the Universal Service Fund for, only eligible goods and services. (Sections 54.504 (b) (1) which was effective as of July 17, 1997 and 54.504 (c) which was effective as of February 12, 1998) [Applicable for all funding years]
11. ☐ submitted a certification on FCC Form 486 that an Internet safety policy is being enforced and complied with the certification such that: (Section 54.520 (c) which was effective as of April 20, 2001) [Applicable for all FCC Form 486 submissions subsequent to April 19, 2001 and the Beneficiary received discounts for Internet access, internal connections, and/or for internal connections maintenance]
 - a) it enforced a policy of Internet safety that includes monitoring the online activities of minors and the operation of a technology protection measure, with respect to any of its computers with Internet access, that protects against access through such computers to visual depictions that are obscene, child pornography or harmful to minors (Section 54.520 (c) (1) (i) which was effective as of April 20, 2001); and
 - b) its Internet safety policy addresses each of the following (Section 54.520 (c) (1) (ii) which was effective as of April 20, 2001):
 - i) access by minors to inappropriate matter on the Internet and World Wide Web;
 - ii) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;
 - iii) unauthorized access, including so-called 'hacking', and other unlawful activities by minors online;
 - iv) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and
 - v) measures designed to restrict minors' access to materials harmful to minors.

C. Service Provider Selection Matters – The *(School or District)::*

1. ☐ made a request for competitive bids for all eligible goods and/or services for which Universal Service Fund support was requested and complied with applicable state and local procurement processes included in its documented policies and procedures. (Section 54.504 (a) which was effective as of February 12, 1997, with clarification included in FCC Order 03-313, paragraphs 39 and 56, which was issued December 8, 2003 and was effective for Funding Year 2005) [Applicable for all funding years]

2. ☐ waited at least four weeks after the posting date of the FCC Form 470 on the USAC Schools and Libraries website before making commitments with the selected service providers. (Section 54.504 (b) (4) which was effective as of January 1, 1999) [Applicable for all funding years]
3. ☐ considered all bids submitted and selected the most cost-effective service offering, with price being the primary factor considered. (Section 54.511 (a) which was effective as of July 21, 2003) [Applicable for FY 2004 and subsequent FYs]
4. ☐ considered all bids submitted and selected the most cost-effective service offering. (Section 54.511 (a) which was effective from July 17, 1997 through July 20, 2003) [Applicable prior to FY 2004]
5. ☐ did not surrender control of its competitive bidding process to a service provider that participated in that bidding process and did not include service provider contact information on its FCC Forms 470. (FCC Order 00-167, paragraph 10, which was issued on May 23, 2000) [Applicable for all funding years]

D. Receipt of Services and Reimbursement Matters – The *(School or District)*:

1. ☐ applied its discount percentage to the appropriate pre-discount price. (Section 54.505 (a) which was effective as of July 17, 1997) [Applicable for all funding years]
 2. ☐ received reimbursement from its service provider for purchases for which it had paid full price to the service provider. (Section 54.514 (b), as revised, which was originally effective as of July 21, 2003 as confirmation of earlier administrative practices) [Applicable for all funding years]
 3. ☐ requested, and funds were disbursed by the Universal Service Fund, amounts related to service substitutions that provided the same functionality and were based on the lower of the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service. (Section 54.504 (f) which was effective as of March 11, 2004 as confirmation of earlier administrative practices) [Applicable for all funding years]
 4. ☐ used the services requested solely for educational purposes. (Section 54.504 (b) (2) (v) which was effective as of October 13, 2004 and superseded Section 54.504 (b) (2) (ii) which was effective as of February 12, 1998; as well as Section 54.504 (c) (1) (vii) which was effective as of October 13, 2004, and Section 54.500 (b) which was effective as of July 21, 2003) [Applicable for all funding years]
 5. ☐ with respect to eligible services and equipment components purchased at a discount: (Section 54.504 (b) (2) (iii) which was effective July 17, 1997 and Section 54.513 (c) which was effective March 11, 2004) [Applicable for all funding years]
- a) did not sell or resell such items for money or any other thing of value;

- b) did not transfer such items, with or without consideration of money or any other thing of value, for a period of three years after purchase, or to date, other than in the event that such transfer was made to another eligible school or library in the event the particular location where the service was originally received was permanently or temporarily closed;
 - c) notified USAC of any such allowable transfer; and
 - d) maintained, as did the recipient, detailed records documenting the transfer and the reason for the transfer date.
6. ☐ paid all “non-discount” portions of requested goods and/or services. (Section 54.523 which was effective as of March 11, 2004; and was clarified in FCC Order 04-190, paragraph 24, which was issued August 13, 2004; as well as Section 54.504 (b) (2) (v) which was effective from July 17, 1997 through March 10, 2004) [Applicable for all funding years]
7. ☐ allocated the costs of any contract that included both eligible and ineligible components to those eligible and ineligible components in the related request for discount. (Section 54.504, which was effective as of July 17, 1997, with confirmation of earlier administrative practices included in FCC Order 03-313, paragraph 60, which was issued on December 8, 2003, and codified in Section 54.504 (g) which was effective as of March 11, 2004) [Applicable for all funding years]
8. ☐ deducted from the pre-discount cost of services, indicated in funding requests, the value of all price reductions, promotional offers and “free” products or services. (Section 54.504 which was effective as of July 17, 1997, with confirmation of earlier administrative practices included in FCC Order 03-313, paragraph 60, that confirmed earlier administrative practices, which was issued on December 8, 2003, and codified in Section 54.523 which was effective as of March 11, 2004) [Applicable for all funding years]

Dated [DATE], 2008

NAME, Superintendent of Schools
(Or Head of School or Library)
BENEFICIARY NAME

NAME, Chief Financial Officer
BENEFICIARY NAME

NAME, E-Rate Coordinator
BENEFICIARY NAME

ATTACHMENT B

DOCUMENTS DUE TO TCBA WITHIN THREE WEEKS FROM THE DATE OF RECEIPT OF THE ANNOUNCEMENT LETTER

1. Technology plan(s) covering the Funding Year(s) identified in the letter. (letters certifying technology plans, required in all cases, except for requests for basic local and long distance telephone services only)
2. Approval letter(s) for the technology plans in item 1 above.
3. Technology budget(s) for the technology plans in item 1 above.
4. General description of the information technology environment and a high-level network diagram. <i>(The description should include how Schools and Libraries (S&L) Program funding for internal connections is being used in the IT environment.)</i>
5. Method used and documentation supporting the discount calculation used on your Form 471. Please, identify each entity included in your supporting documentation with the Entity Number assigned by USAC, as it is included in your FCC Forms 471. <i>(For example, if using NSLP students for determining the discount percentage, then the documentation should consist of the internal document(s) used to indicate the total student and NSLP student counts.)</i>
6. Copies of audited financial statements for the Funding Year(s) identified in the accompanying letter and a copy of the most recent statements.
7. If your organization is required to have a Single Audit, copies of the OMB Circular A-133 audit reports covering the Funding Year(s) identified in the accompanying letter through the most recent such report,
8. Copies of your Internet Safety Policy and other documentation supporting compliance with the Children's Internet Protection Act (CIPA).
9. Fixed asset inventory or other records listing S&L Program funded equipment that was acquired and reimbursed under the FRN(s) identified in the accompanying letter. <i>(Not necessary if the FRNs related to services rather than equipment.)</i> <p style="margin-left: 40px;">This listing should include the following elements:</p> <ul style="list-style-type: none">• Make• Model• Serial number• Physical location (including room number and any movement history)• Date installed• FRN• Customer bill reference number(s)
10. If applicable, list of all individuals or consulting firms that assisted in the preparation of E-Rate documentation (include phone numbers and business addresses).
11. Copies of all relevant contracts and written agreements with service providers and E-Rate consultants for the period(s) and FRN(s) identified in the accompanying

letter. <i>(Include addendums and amendments.)</i>
12. Record Retention Policy that applied to and was followed for E-Rate related documentation for the FRN's indicated in our letter.
13. Completed Internal Control Questionnaire (see Attachment F).
14. If using Service Provider Invoices (SPIs), contact the Service Provider(s) and alert them to the audit and obtain a Point of Contact for TCBA at the Service Provider(s).
15. Quarterly Disbursement Reports provided by USAC.

ATTACHMENT C

DOCUMENTS DUE TO TCBA UPON ARRIVAL

<p>A. Copies of the following forms (if applicable) for the Funding Year(s) and FRN(s) identified in the accompanying letter:</p> <ul style="list-style-type: none">i. FCC Form 470ii. FCC Form 471iii. FCC Form 486iv. FCC Form 472 (BEAR), if used for reimbursement(s)v. BEAR Notification Letter, if applicablevi. FCC Form 500, if applicable
<p>B. All documentation associated with above FCC Form(s) 471 and selected FRN(s) to include, but not limited to, service substitution approval letters and equipment transfer notification letters to USAC.</p>
<p>C. When FCC Form 472 (BEAR) is used:</p> <ul style="list-style-type: none">i. Copy of canceled checks written to the service provider or bank statements showing electronic payment date, amount, and payee information (along with any documentation support for the electronic payment) for all payments to the service providerii. Copy of bank statement and any other supporting documentation to confirm receipt of the discounted portion from the service provider, along with proof of deposit (deposit slips, bank statements).iii. For FRN's reimbursed through BEAR's, please prepare the Service Provider Bill & Reimbursement Reconciliation (see Attachment G) that reconciles all of the applicable service provider invoices paid by the School District to the BEAR form reimbursement amount.
<p>D. When FCC Form 474 (SPI) is used, please provide evidence of subsequent reimbursement from the service provider for any services billed at full cost (that is services were not discounted; usually because USAC funding had not yet been approved). This evidence could consist of the following: 1) if a service provider check was received, copies of deposit slips and the bank statements reflecting the deposits; 2) if a service provider credit was received, copies of the service provider bills or invoices to the School District's account identifying such credits; 3) if electronic funds were received from the service provider, copies of the bank statements reflecting such receipts and copies of the bank's remittance advices.</p>
<p>E. When FCC Form 474 (SPI) is used, for all services billed at discounted cost, please provide evidence that the USAC funded amount was not exceeded by preparing the Service Provider Bill & Reimbursement Reconciliation (see Attachment H) that provides an analysis of service provider bills to S&L Program invoices.</p> <p>Also, please pull and have available all original service provider bills and invoices for audit examination. If not voluminous, provide copies of the bills and invoices.</p>

Otherwise, TCBA will select a sample for copying.
F. Copies of local and state procurement regulations pertaining to contracting for the purchase of telephone service, internet access, and internal connections.
G. In association with the above FCC Form(s) 471, information related to the service provider selection process including, but not limited to: <ul style="list-style-type: none"> i. RFPs or bidding specifications ii. all bids received (both winning and losing) iii. correspondence (including documentation of informal communications) with potential selected service providers (i.e. competitive bidding, service issues, etc.) iv. meeting minutes for discussions and selection of service provider(s)
H. Copy of relevant meeting minutes during the period(s) being examined where the S&L Program was an agenda item.
I. If applicable, copies of contract(s) for the technology protection measure (i.e. Internet filter) and invoices for the Funding Year(s) under review.
J. The FCC- Inspector General has requested the following contact information: <ul style="list-style-type: none"> i. School board members' names and telephone numbers ii. Superintendent's name and telephone number iii. Principal's name and telephone number (if the beneficiary is an individual school) iv. CFO or controller's name v. Consultant's company name, address, and telephone number, as well as the individual consultant's name (if a S&L Program consultant is used)

ATTACHMENT D

FCC NOTIFICATION LETTER



Federal Communications Commission Washington, D.C. 20554

November 5, 2008

Dear Schools and Libraries Program Beneficiary:

Under the oversight of the Federal Communications Commission ("FCC") Office of Inspector General ("OIG"), the Universal Service Administrative Company ("USAC") is auditing beneficiaries that receive federal Universal Service Funds ("USF") from the FCC's Schools and Libraries Support Program. Under this audit process, your organization named in the audit firm's announcement letter was randomly selected for audit, and USAC retained a Certified Public Accountant ("CPA") audit firm to audit your organization. As a consequence, the FCC's Inspector General ("IG") expects that the CPA firm will be given immediate and complete access to the books, records, and any other supporting documentation that was requested of your organization in the enclosed audit announcement letter from USAC and any additional information that the auditor shall require.

As the FCC appointed administrator of the Universal Service support mechanisms,¹ USAC is legally authorized to audit schools and libraries reporting USF data.² The FCC, the FCC's IG, and USAC may request and obtain all records and documents and other information that is necessary to determine whether your entity has been in compliance with all FCC and state requirements for the Schools and Libraries Support Program.³ Under the Commission's rules, schools and libraries are required to maintain records and documents that demonstrate compliance with the FCC's rules and orders that are applicable to the Schools and Libraries USF fund. Upon request from the FCC, OIG, or USAC, schools and libraries shall provide such records to the FCC or to the FCC IG, or to USAC's auditors.

We look forward to your full and complete cooperation with the assigned CPA firm in its efforts to complete the audit of your organization. Failure to comply with FCC rules will subject your organization to the enforcement provisions (e.g., fines and forfeitures) of the Communications Act of 1934, as amended, and all other applicable laws and regulations.

¹ 47 CFR § 54.701(a).

² 47 CFR § 54.707.

³ 47 CFR § 32.12; 5 USC, App. 3, § 6(a)(1).

If you have any questions, please contact William Garay, Assistant Inspector General for Universal Service Fund Oversight, at (202) 418-7899 / William.Garay@fcc.gov or Beth Engelmann, Auditor, Universal Service Fund Program Audits, at (202) 418-1448 / Beth.Engelmann@fcc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kent R. Nilsson". The signature is fluid and cursive, with the first name "Kent" being more prominent and the last name "Nilsson" following in a similar style.

Kent R. Nilsson
Inspector General

ATTACHMENT E

USAC NOTIFICATION LETTER

USAC

Universal Service Administrative Company

Wayne M. Scott
Vice President

Internal Audit Division

November 14, 2008

RE: FCC Inspector General Universal Service Fund Audits – Round 3 (2008-2009)

Dear E-Rate Program Beneficiary:

The Universal Service Administrative Company (USAC) has engaged the services of professional public accounting firms (audit firms) to perform examinations of recipients of Universal Service Fund (USF) Schools & Libraries (S&L) funds. These Examinations are being conducted under the direction of the Federal Communications Commission (FCC) Office of Inspector General (OIG) principally to assess compliance with FCC Rules and to address requirements related to the Improper Payments Information Act (IPIA).¹ The examination of your company relates to compliance with FCC Rules and the E-rate program disbursements. The efficiency of the examination will depend on the availability of your staff and the condition of the documentation made available prior to and during the course of the examination.

Nature of the Examination

As more fully described in Governmental Auditing Standards and AICPA Standards (Section AT 601), a compliance attestation examination requires that management:

- 1) Perform an evaluation of its compliance with *47 C.F.R Part 54, Subparts C, D, J and K and Part 36, Subpart F Rules and applicable Orders ("Rules and Orders")*
- 2) Acknowledge (in the form of an assertion letter, an example assertion letter is attached for reference) responsibility for compliance with applicable requirements of the Rules and Orders; and
- 3) Provide a representation letter to the audit firm. The form and content of the management representation letter will be discussed with management at the inception of this examination.

Contact Information

The audit firm will provide you with contact information of audit firm personnel responsible for conducting the audit. If you have any questions or concerns that the audit firm cannot address, please contact the following USAC personnel:

¹ Public Law 107-300, Stat. 2350. November 26, 2002

NAME	COMPANY	POSITION	PHONE NUMBER	EMAIL
Jeff Mitchell	USAC	Director, Outsourced Audit Services	202-776-0200	jmitchell@usac.org
Wayne M. Scott	USAC	Vice President, Internal Audit	202-776-0200	wscott@usac.org

Other Matters

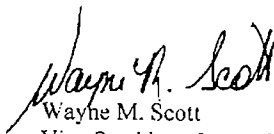
Please recognize that the audit firm has the same authority as USAC's Internal Audit Division to request and view documents.

The results of the audit firm's work including your management's written response will be presented in a draft report to USAC and the FCC Office of Inspector General (FCC OIG). Upon review and approval of the report by USAC in consultation with FCC OIG, the report will be distributed to appropriate parties.

The following URL provides some additional information to assist your understanding of this examination: <http://www.sl.universalservice.org/reference/bestpractices.asp>.

If there are any matters or issues that you would like to make us aware of, or if you have any questions or concerns, please feel free to call Mr. Jeff Mitchell or myself.

Sincerely,



Wayne M. Scott
Vice President, Internal Audit Division
Universal Service Administrative Company

ATTACHMENT F

INTERNAL CONTROL QUESTIONNAIRE

(Microsoft copy provided with notification email)

PROPERTY MANAGEMENT

To comply with S&L Program rules and to be able to demonstrate compliance, USAC has urged that beneficiaries "maintain an updated list or file of the status of all work, in order to monitor both the progress of the project and the expenditure of approved funds related to the project." Furthermore, USAC urges that beneficiaries "verify – either through an approved internal process or by an independent third party - that all work has been completed and that all equipment is operating properly."

In addition, USAC urges that beneficiaries "maintain and update detailed asset registers (including make, model, serial number, and location) for all sites to facilitate the tracking of equipment purchased with USF support.

Control Question	Yes/No or NA	Description of Control
1) Do you have a property management system that records acquisitions, disposals, and locations of physical assets?		
2) Are physical assets funded through the S&L Program included in the property management system?	(If "No", describe the system used for S&L Program funded assets and answer the following questions for that system.)	
3) Are S&L Program funded assets designated as such in the system?		
4) Are there policies and procedures that define usage of the property management system?		

Control Question	Yes/No or NA	Description of Control
5) Does the property management system include an identification number (such as a serial number or a property ID tag number)?		
6) Does the property management system capture the method of acquiring each physical asset and the date of the acquisition?		
7) Can individual assets in the property management system be traced to invoices and/or other records of receipt?		
8) Are there controls to ensure that the property management system is updated if physical assets are moved or disposed of?		
9) Do you perform physical inventories and reconcile the counts to the property management system? (If so, how often is this done?)		
10) Does the property management system provide an audit trail of additions, changes, and dispositions of the physical assets?		
11) Are physical assets protected from theft?		
12) Do you maintain any excess inventory of S&L Program funded assets in a secure environment?		

ACCOUNTS PAYABLE/CASH DISBURSEMENTS

To comply with S&L Program rules and to be able to demonstrate compliance, USAC has urged that beneficiaries who use Form 472 (BEAR) to request reimbursement for approved expenses” review and approve the form to ensure that the work has been completed, that the service provider’s bill has been paid in full, and that the reimbursement amount requested is correct.” In addition, USAC urges that these beneficiaries “maintain a file for each Form 472 (BEAR) submitted to USAC. This file should contain a completed copy of the Form (including the signature of the service provider) and all supporting documentation.”

For those who do not use Form 472 for reimbursement, USAC urges that the beneficiaries “review the Quarterly Disbursements Report provided by the Schools and Libraries Program to ensure any payments to service providers are consistent with work actually performed and discounts provided on bills received.”

Furthermore, USAC urges all beneficiaries to “maintain a spreadsheet which tracks either the Form 472 (BEAR) requests for reimbursement or the discounts (in the form of discounts on bills, checks, or credits) provided by the service provider to ensure the committed amount on the FRN(s) has not been exceeded.” See also the USAC guidance at <http://www.sl.universalservice.org/reference/bestpractices.asp>.

Control Question	Yes/No or NA	Description of Control
1) Are there policies and procedures that define how billings are recorded and vendor payments are made?		
2) Are all disbursements reviewed and approved before payment?		
3) Do you ever use Form 472 (BEAR) for reimbursement of S&L Program eligible expenses?	(If “Yes”, continue with the next question. If “No”, skip to question 7.)	
4) Before you submit a Form 472 (BEAR), do you ensure that the work has been completed, that the service provider’s bill has been paid in full, and that the reimbursement requested is correct?		

Control Question	Yes/No or NA	Description of Control
5) Do you maintain a file for each Form 472, which includes the following supporting documents, a) vendor invoice or a worksheet supporting the claim, b) proof of payment to the service provider, c) correspondence with vendor regarding payments of the related invoices?		
6) Do you have a process to identify and remove non S&L Program eligible charges on invoices before submitting each FCC Form 472?		
7) When receiving discounted services from the service provider, do you maintain files that contain a) vendor invoice or reconciliation worksheet supporting the undiscounted portion of the S&L Program expenditure, b) proof of payment for the undiscounted portion, c) support that the discounted services billed were received and were approved by the Funding Commitment Letter, and d) if possible, copies of the invoice submitted by the service provider to the Schools and Libraries Division?		
8) Do you review the "Quarterly Disbursements Report" provided by the Schools and Libraries Division to ensure that payments to service providers are consistent with the goods and services received from the service provider and the discounts shown on bills received?		

Control Question	Yes/No or NA	Description of Control
9) Do you maintain a spreadsheet or track by another method the total amount of the Form 472 requests and the discounts allowed by service providers to ensure that the FRN(s) has not been exceeded?		
10) Do your records provide the ability to track S&L Program funded assets from invoices to your property management system?		

S&L PROGRAM APPLICATION & CONTRACTING (FCC FORMS 470 AND 471)

To comply with S&L Program rules and to be able to demonstrate compliance, USAC has urged that beneficiaries maintain a file of the Services Requested and Certification Form (Form 470) and the Services Ordered and Certification Form (Form 471) applications. See also the USAC guidance at <http://www.sl.universalservice.org/reference/bestpractices.asp>.

Control Question	Yes/No or NA	Description of Control
1) Is a specific individual responsible for the S&L Program application process?		
2) Is the responsible individual knowledgeable in S&L Program requirements and processes?	(If “Yes”, explain qualifications.)	
3) Are the FCC Form 470 and FCC Form 471 reviewed and approved by an appropriate official		
4) Do you have a policies and procedures manual that summarizes the procurement process?		

Control Question	Yes/No or NA	Description of Control
5) Do you maintain an S&L Program application file containing the following documents? a) FCC Form 470 b) FCC Form 471 c) Requests for Proposal, if applicable d) Copies of all bids e) Documentation of the award process and the rationale for the bid award f) Copies of all related contracts g) Copies of all service provider invoices h) Copy of the board resolution for any contract award, and i) Any other related documentation		
6) Do you maintain a log of all communications with USAC, including the name of the person making the call, the time and date of the call, the name of the USAC employee who responded to the call, and the substance of the communication?		
7) Do you maintain a file of all change orders or documentation for verbal change orders?		

ATTACHMENT G

SERVICE PROVIDER BILL & REIMBURSEMENT RECONCILIATION

Instructions for preparing the spreadsheet	
Row 3	Insert the name of your organization as shown on the Announcement Letter
Row 4	Insert the name of the person who prepared this spreadsheet and the date it was prepared
Col. A	Insert the FCC Form 471 number from the Announcement Letter and from Attachment C to that letter. If there are more than one FCC Form 471, add additional tabs (worksheets) for each additional form.
Col. B	From the Announcement Letter and from Attachment C to that letter, insert the FRN number(s) that relate to the FCC Form 471 in Col. A.
Col. C	Insert the name of the service provider for the FRN in Col. B.
Col. D	Insert the type of S&L Program service (Telecom, Internet Access, or Internal Connections) that the FRN in Col. B provides
Col. E	Insert the reference number (invoice number) for the bill received from the service provider.
Col. F	Insert the date of the bill received from the service provider.
Col. G	Insert the dollar amount of the bill received from the service provider.
Col. H	Indicate whether this FRN uses the SPI (FCC Form 474) or the BEAR (FCC Form 472) method to request reimbursement from USAC.
Col. I	If known, indicate the number of the FCC Form 474 or FCC Form 472 used to request reimbursement for the service provider bill in Cols. E through G.
Col. J	Insert the discounted amount submitted to USAC for reimbursement. (Service provider bill amount less any ineligible charges times the discount percentage)
Col. K	Insert any ineligible charges included in the service provider bill in Cols. E through G.
Col. L	Insert a reference letter to provide an explanation for any ineligible charges or other items that need further explanation. Provide the explanation below the matrix.
Col. M	Insert the undiscounted amount, the Beneficiary's share, included in the service provider bill in Cols. E through G.
Col. N	Provide the number of the check that paid the undiscounted amount, your share, of the service provider bill in Cols. E through G. (If a single check covered more than one service provider bill, insert that check number on each row to which it relates.)
Col. O	Provide the date of the check in Col. N.
Col. P	Provide the total dollar amount of the check in Col. N.
Col. Q	Because the check in Col. N through Col. P may cover more than one service provider bill, indicate the portion of the check that relates to the undiscounted amount.
Col. R	For SPI reimbursements, this column is calculated as Col. M, the undiscounted amount, less Col. Q, the portion of the check related to the bill. For BEAR reimbursements, this column is calculated as Col. Q, the portion of the check amount related to the bill, less Col. J, the discounted amount, less Col. M, the undiscounted amount.
Col. S	Insert a reference letter to provide an explanation for any differences or other items that need further explanation. Provide the explanation below the matrix.

Service Provider Bill Reimbursement Reconciliation Spreadsheet – To Be Completed By The Beneficiary

[illegible]

Comments	
<i>R1</i>	
<i>R2</i>	
<i>R3</i>	

ATTACHMENT G **Example Service Provider Bill Reimbursement Reconciliation Spreadsheet**

Beneficiary Name: _____ Date Prepared: _____
 Prepared By: _____

FCC Form #71	PRN No.	Service Provider Name	Category of Service	Service Provider No.	Service Date	Total Service Provider Bill Amount	Method of Invoicing	SP/Referral No. (if known)	Amount Submitted to USAC	Intelligible Charges (if any)	Unaccounted Amount (col. G - J - K)	Check Date	Check Amount	Portion of check related to bill	Difference in undiscounted amount paid
98154	17456	Bill's Telecom	Telecom	A-135	07/03/03	\$ 1,000.00	SP		\$ 900.00	-	\$ 100.00	07/14/03	\$ 100.00	\$ 100.00	\$ -
				A-140	09/02/03	\$ 2,500.00	SP		\$ 2,500.00	-	\$ -	09/19/03	\$ 250.00	\$ 250.00	\$ -
				A-141	09/02/03	\$ 2,500.00	SP		\$ 2,500.00	-	\$ -	09/19/03	\$ 250.00	\$ 250.00	\$ -
				A-142	11/02/02	\$ 2,500.00	SP		\$ 2,500.00	-	\$ -	07/14/04	\$ 250.00	\$ 250.00	\$ -
				A-143	12/02/02	\$ 2,500.00	SP		\$ 2,500.00	-	\$ -	07/14/04	\$ 250.00	\$ 250.00	\$ -
				A-144	12/02/02	\$ 2,500.00	SP		\$ 2,500.00	-	\$ -	07/14/04	\$ 250.00	\$ 250.00	\$ -
				A-145	11/02/02	\$ 2,500.00	SP		\$ 2,500.00	-	\$ -	07/14/04	\$ 250.00	\$ 250.00	\$ -
				A-146	02/02/04	\$ 2,500.00	SP		\$ 2,500.00	-	\$ -	07/14/04	\$ 250.00	\$ 250.00	\$ -
				A-147	03/02/04	\$ 2,500.00	SP		\$ 2,500.00	-	\$ -	07/14/04	\$ 250.00	\$ 250.00	\$ -
				A-148	04/02/04	\$ 2,500.00	SP		\$ 2,500.00	-	\$ -	07/14/04	\$ 250.00	\$ 250.00	\$ -
				A-149	05/02/04	\$ 2,500.00	SP		\$ 2,500.00	-	\$ -	07/14/04	\$ 250.00	\$ 250.00	\$ -
				A-150	06/23/04	\$ 2,500.00	SP		\$ 2,500.00	-	\$ -	07/14/04	\$ 250.00	\$ 250.00	\$ -
						\$ 27,000.00			\$ 23,500.00	\$ 3,500.00	\$ 3,500.00	09/26/04	\$ 450.00	\$ 450.00	\$ -
				G-211	05-13/03	\$ 1,800.00	BFAR	666666	\$ 1,800.00	-	\$ -	09/26/04	\$ 1,800.00	\$ 1,800.00	\$ -
				G-236	12-12/03	\$ 1,800.00	BFAR	777777	\$ 1,800.00	-	\$ -	09/26/04	\$ 1,800.00	\$ 1,800.00	\$ -
				G-240	01-12/04	\$ 1,800.00	BFAR	888888	\$ 1,800.00	-	\$ -	09/26/04	\$ 1,800.00	\$ 1,800.00	\$ -
				G-240	01-12/04	\$ 1,800.00	BFAR	999999	\$ 1,800.00	-	\$ -	09/26/04	\$ 1,800.00	\$ 1,800.00	\$ -
						\$ 7,000.00			\$ 6,400.00	\$ 600.00	\$ 600.00		\$ 600.00	\$ 600.00	\$ -
															\$ 600.00

Comments:

(M) Service Provider bill service charges contained multiple charges consisting of late fees totaling \$50. We initially paid \$250 which was our 10% share of the amount \$2,500. We later paid the additional \$450 of one of the charges that remained unpaid.

(N) The amount of the Service Provider bill was only \$2,500 due to a clerical error. A subsequent check for \$450 was issued to correct the error.

(O) The amount and type of bill is correct except for additional charges that included in the FCC Form 71. We added the additional charges.

Exhibit G

THOMPSON, COBB, BAZILIO & ASSOCIATES, PC
Certified Public Accountants and Management, Systems, and Financial Consultants

■ Main Office:
1101 15th Street, N.W.
Suite 400
Washington, DC 20005
(202) 737-3300
(202) 737-2684 Fax

□ Regional Office:
100 Pearl Street
14th Floor
Hartford, CT 06103
(860) 249-7246
(860) 275-6504 Fax

□ Regional Office:
21250 Hawthorne Boulevard
Suite 500
Torrance, CA 90503
(310) 792-7001
(310) 792-7004 Fax

Independent Accountant's Report
SL-2008-337

Lake Elsinore Unified School District
545 Chaney Street
Lake Elsinore, CA 92530
Attn: Dr. Frank W. Passarella- Superintendent
Mr. J. R. Rea – Director, IT Services

Universal Service Administrative Company
2000 L Street N.W.
Suite 200
Washington, D.C. 20036
Attn: Internal Audit

Federal Communications Commission
445 12th Street S.W.
Washington D.C. 20554
Attn: Inspector General

We have examined Lake Elsinore Unified School District's, Beneficiary Number 143749, compliance with the Federal Communications Commission's 47 C.F.R. Part 54 Rules and Related Orders identified in the accompanying Attachment 1 relative to disbursements of \$455,067.33 from the Universal Service Fund during the fiscal year ended June 30, 2008, for telecommunications services and Internet access and relative to its application and service provider selection processes for Funding Years 2006 and 2007. Management is responsible for Lake Elsinore School District's compliance with those requirements. Our responsibility is to express an opinion on Lake Elsinore Unified School District's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States and, accordingly, included examining, on a test basis, evidence about Lake Elsinore Unified School District's compliance with those requirements and performing such other procedures as we considered necessary under the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on Lake Elsinore Unified School District's compliance with specified requirements.

During our examination, we found a material deviation from the program requirements of 47 C.F.R. Part 54 Rules and Related Orders. Lake Elsinore Unified School District did not comply with all state and local procurement policies. Detailed information relative to this instance of material noncompliance is described in Attachment 2

In our opinion, except for the effects of noncompliance described above, Lake Elsinore Unified School District complied with the aforementioned requirements relative to disbursements of \$455,067.33 from the Universal Service Fund during the fiscal year ended June 30, 2008, for telecommunications services and Internet access and relative to its application and service provider selection processes for Funding Years 2006 and 2007.

In addition, in accordance with *Government Auditing Standards*, we noted other matters that we have reported to the management of Lake Elsinore Unified School District in a separate letter dated May 12, 2009.

This report is intended solely for the information and use of Lake Elsinore Unified School District management and others within the organization, the Universal Service Administrative Company, and the Federal Communications Commission and is not intended to be, and should not be, used by anyone other than these specified parties.

Thompson, Colb, Bazilio & Associates, P C.

Washington, DC
May 12, 2009

ATTACHMENT 1

Federal Communications Commission's (FCC's) 47 C.F.R. Part 54 Rules and Related Orders With Which Compliance was Examined

Document Retention Matters

Section 54.516 (a), which was effective from July 17, 1997 through November 11, 2004

Application Matters:

Section 54.501 (b), which was effective as of July 17, 1997
Section 54.504 (a), which was effective as of July 17, 1997
Section 54.504 (b), which was effective as of July 17, 1997
Section 54.504 (b) (1), which was effective as of July 17, 1997
Section 54.504 (b) (2), which was effective as of July 17, 1997
Section 54.504 (c), which was effective as of February 12, 1998
Section 54.505 (b), which was effective as of July 17, 1997
Section 54.505 (c), as revised, which was originally effective as of July 17, 1997
Section 54.502, which was effective as of February 12, 1998
Section 54.503, which was effective as of February 12, 1998
Section 54.506 (b), which was effective as of February 12, 1998
Section 54.518, which was effective as of February 12, 1998
FCC Order 03-313, paragraph 56, which was issued December 8, 2003

Service Provider Selection Matters:

Section 54.504 (a), which was effective as of July 17, 1997
Section 54.504 (b) (4), which was effective as of February 12, 1998
Section 54.511 (a), which was effective as of July 17, 1997
FCC Order 03-101, paragraph 24, which was issued on July 15, 2003
FCC Order 00-167, paragraph 10, which was issued on May 23, 2000

Receipt of Services and Reimbursement Matters:

Section 54.505 (a), which was effective as of July 17, 1997
Section 54.514 (b), which was effective as of August 14, 2003
Section 54.504 (b) (2) (ii), which was effective as of July 17, 1997
Section 54.500 (b), which was effective as of August 14, 2003
Section 54.504 (b) (2) (iii), which was effective as of July 17, 1997
Section 54.513 (c), which was effective as of March 11, 2004
Section 54.504 (b) (2) (v), which was effective as of July 17, 1997
Section 54.504, which was effective as of July 17, 1997
Section 54.504 (g), which was effective as of March 11, 2004
FCC Order 03-313, paragraph 60, which was issued on December 8, 2003

ATTACHMENT 2

Detailed Information Relative to Material Noncompliance (Finding)
(Presented in accordance with the standards applicable to attestation engagements contained in
***Government Auditing Standards*)**

Finding No.	SL2008BE337_F01 District Did Not Comply with All State and Local Procurement Policies
Assertion	C.1. The School/District made a request for competitive bids for all eligible goods and/or services for which Universal Service Fund support was requested and complied with applicable state and local procurement processes included in its documented policies and procedures.
Condition	For FRNs 1423335 and 1423456 on FCC Form 471 #513324 for Funding Year 2006 and for FRNs 1563982 and 1564329 on FCC Form 471 #566516 for Funding Year 2007, the Lake Elsinore Unified School District's procurement of telecommunications services and Internet access, including receiving bids and selecting the service providers, was carried out solely by the Director of Information Technology (IT) Services, who also played a lead role in developing and implementing the District's Technology Plan and is responsible for managing the District's technology resources and supporting its technology users. The Director of IT carried out the procurement process without a written procurement manual or other document describing procurement policies and procedures to be followed. Requests for Proposals (RFP) were posted on the District website.
Criteria	<p>Section 54.504(a) of 47 C.F.R. of the FCC Rules and Regulations and Related Orders requires that eligible schools seek competitive bids and states that state and local competitive bid requirements apply for all eligible services.</p> <p>Lake Elsinore Board of Education policy (BP 3300) states that "the Superintendent or designee shall develop and maintain effective purchasing procedures that are consistent with sound financial controls and that ensure the district receives maximum value for items purchased."</p> <p>Section 20112 of the California Public Contract Code requires that school districts, for the purposes of securing bids, "shall publish at least once a week for two weeks in some newspaper of general circulation published in the District...a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place and the website where bids will be opened."</p>

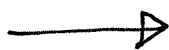
Cause

The Director of IT stated that although the District has a Purchasing section, he handled the procurement process because resources within the District are scarce and he is considered as the most qualified person to determine the District's telecommunications and Internet needs. The District believed that the Director was qualified to perform the procurement process and did not believe additional staff was necessary. The Lake Elsinore Unified School District did not have written procurement policies and procedures providing instruction to District officials in carrying out the competitive bidding process.

The Lake Elsinore Unified School District posted the RFPs on their District website instead of advertising the RFPs in a local newspaper. According to the District's Director of IT, the District did not believe its purchase of telecommunications services was subject to the California Public Contract Code requirements because these services may be considered as a utility and not subject to this code. A consultant hired specifically to help the District prepare for and respond to the E-Rate audit attempted to clarify this matter with California Department of Education officials. According to the consultant, her inquiries led to discussions among California Department of Education officials and others in an effort to determine whether purchases of E-Rate services by school districts in California are subject to the state's Public Contract Code. The consultant stated that there was no official position on this issue and that the general consensus of the state officials was that there does not seem to be specific language in state law regarding school districts' purchase of telecommunications services. She noted that the state officials may seek guidance on this issue from USAC and possibly the FCC.

Effect

The District did not use adequate internal controls in carrying out the procurement of E-Rate services. The District's procurement of telecommunications services and Internet access was carried out solely by the Director of IT, who was not independent of the internal customers or users of the District's technology services. The District's handling of the competitive bidding process does not provide internal controls to ensure proper checks and balances to help prevent the potential for abuse and to achieve a quality product at a fair and reasonable price without real or apparent conflicts of interest in the solicitation, evaluation, or award.



The lack of written policies and procedures for competitive bidding may weaken internal control, thereby allowing errors to occur undetected in carrying out the process, including not complying with state and local procurement laws and regulations. The lack of written policies and procedures may also cause confusion regarding the proper operation of the competitive bidding process, accountability, or assigned responsibilities. It is also inconsistent with the Lake Elsinore Board of Education policy requiring the establishment of effective purchasing procedures that are consistent with sound financial controls.

In addition, the Lake Elsinore Unified School District did not comply with all California procurement requirements. The District did not request bids for telecommunications services by advertising its RFPs in a local newspaper at least once a week for 2 weeks, as required by the California Public Contract Code

The total amount disbursed for these FRN, of \$447,128.35 is subject to recovery.

Recommendation

We recommend that the Lake Elsinore Unified School District establish a competitive bidding process for E-Rate program services that does not rely solely on one individual, *i.e.*, the Director of IT, to carry it out. The District should implement checks and balances for the procurement process, such as the involvement of more than one individual, particularly to evaluate bids and select providers. Implementing such checks and balances will help ensure that internal controls are utilized to achieve autonomy of the procurement function and help achieve quality services at a fair and reasonable price without real or apparent conflicts of interest in the solicitation, evaluation, or award. This will also help ensure that the District complies with the Board of Education policy requiring the establishment of effective purchasing procedures that are consistent with sound financial controls and that ensure the District receives maximum value for items purchased.

In addition, we recommend that the Lake Elsinore Unified School District develop written policies and procedures for the competitive bidding process. Such a document can strengthen internal control and familiarize staff with required procurement procedures, providing a clear and common understanding of goals, benefits, and policies, as well District expectations regarding performance and conduct. Written procurement policies and procedures will also help ensure compliance with the Board of Education policy requiring the establishment of effective purchasing procedures that are consistent with sound financial controls and that ensure the District receives maximum value for items purchased.

*

We also recommend that the Lake Elsinore Unified School District comply with all California procurement policies by advertising for bids in a local newspaper at least once a week for two weeks when seeking competitive bids for providing E-Rate services.

**Beneficiary
Response**

The Lake Elsinore Unified School District attempts at all times to comply with applicable Federal, State, and local procurement guidelines and processes with documented policies and procedures. It seems that within Issue No. SL2008BE337_F01 that there are actually two separate issues identified being 1) that the District did not follow State and local guidelines in the procurement of services eligible for Universal Services Support for funding years 2006 and 2007; and 2) that the District in general has inadequate controls and written policies in regards to

procurement. The District will address each of these areas separately in the following paragraphs.

1) Issue SL2008BE337_F01 states the following Criteria regarding competitive bidding practices that the auditors believe were not met as follows:

"Section 54.504(a) of 47 C.F.R. of the FCC Rules and Regulations and Related Orders requires that eligible schools seek competitive bids and states that state and local competitive bid requirements apply for all eligible services."

In addition, the following Effect was stated:

"In addition, the Lake Elsinore Unified School District did not comply with all California procurement requirements. The District did not request bids for telecommunications services and Internet access by advertising its RFPs in a local newspaper at least once a week for 2 weeks, as required by the California Public Contract Code."

The District respectfully asserts that it did meet these Criteria as evidenced in the following arguments.

✱ It is the opinion of The Lake Elsinore Unified School District, in consultation with purchasing professionals at both the county level and at the State level that telecommunications services, under regulation by the FCC and the California Public Utilities Commission (CPUC), are not subject to the competitive bidding requirements outlined in California Public Contract Code (CPCC). Nowhere in CPCC is the procurement of utilities or telecommunications specifically addressed. In lieu of specific guidance, the District 1) followed FCC guidelines regarding competitive bidding, and 2) followed best practices in the procurement of these types of services by purchasing services off of a State master contract. Please see further discussion below.

The District followed FCC guidelines by posting a Form 470 and an RFP for a minimum of 28 days. It was not strictly necessary to do so since its services were already under a multi-year contract, expiring on December 3, 2008. This contract was awarded in conjunction with a previous Funding Year's Form 470 and 28-day competitive bidding process. However, the District felt that in conducting a competitive bidding process for each Funding Year that it was being more than compliant with FCC rules. It examined all bids submitted and selected the most cost effective service provider. In the case of the FRNs under examination, the sole bidder was the incumbent service provider, AT&T.

In addition to FCC guidelines, the District also followed local and State procurement guidelines. The District purchased telecommunications and Internet services via the California Integrated Telecommunications

Network, CALNET Master Agreement CNT-001 (CalNet 1) that was competitively bid by the California Department of General Services. This master contract, awarded in 1998, and extended through December 3, 2008, secured rates on various telecommunications and Internet services that were then made available to local government agencies, including public school districts. On the State's website, <http://www.dts.ca.gov/stnd/calnet.asp>, there is the following statement: "Also, this contract is the result of an extensive competitive bidding process; therefore, agencies can purchase directly from the contract with confidence that all government requirements for competitive bidding have already been met."

In addition, there is further language in the Lake Elsinore Unified School District's Board policy, as well as California Public Contract Code, regarding the acceptability for a school district to purchase off of a competitively bid State master contract without the need to go to bid or to advertise.

Lake Elsinore USD | 3000 | BP 3311 Business and Non-instructional Operations

Soliciting Prices (Bids and Quotations)

When the Governing Board has determined that it is in the best interest of the District, the Board may piggyback onto the contract of another public agency or corporation to lease or purchase equipment or supplies to the extent authorized by law.

California Public Contract Code Section 20110-20118.4

20118. Notwithstanding Sections 20111 and 20112, the governing board of any school district, without advertising for bids, if the board has determined it to be in the best interests of the District, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases from a vendor. Upon receipt of the personal property, if the property complies with the specifications set forth in the contract, lease, requisition, or purchase order, the school district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice, including the reasonable costs to the public corporation or agency for furnishing the services incidental to the lease or purchase of the personal property, or the school district may make payment directly to the vendor. Alternatively, if there is an existing contract between a public corporation or agency and a vendor for the lease or purchase of the personal property, a school district may authorize the lease or purchase of personal property directly from the vendor by contract, lease, requisition, or purchase order and make payment to the

vendor under the same terms that are available to the public corporation or agency under the contract.

The District respectfully asserts that in this instance, there is conflict between local and State procurement guidelines and FCC guidelines. Were it not for the FCC requirement of posting a Form 470 to initiate a 28-day competitive bidding process for the sake of securing Universal Service support, the District could simply have just purchased services off of the CalNet 1 contract and have been in compliance with all local and State procurement guidelines. It should be noted that the FCC generally lends precedence to local procurement requirements that foster competitive bidding. The Academia Discipulos de Cristo, et al. Order (DA 06-1642) states "The Commission generally relies on state or local procurement regulations that include competitive bidding requirements as a means to ensure compliance with the Commission's competitive bidding requirements because such rules will likely consider price to be a primary factor, resulting in selection of the most cost-effective proposal. Absent evidence to the contrary in a particular case, we believe that compliance with state or local rules is generally sufficient to support a conclusion that a school has selected the most cost-effective bid for the requested services."

There is considerable evidence that the FCC tends to look favorably on issues surrounding alleged competitive bidding violations when presented with compelling argument(s) regarding confusion, attempts at adherence to local, State and Federal guidelines in concert with one another, and general discussion about how a denial (or COMAD) would adversely affect the beneficiary's ability to further the educational goals of the students served.

2) Issue No. SL2008BE337_F01 states the following Criteria regarding procurement processes and procedures that the auditors believe were not met as follows:

"Lake Elsinore Board of Education policy (BP 3300) states that 'the Superintendent or designee shall develop and maintain effective purchasing procedures that are consistent with sound financial controls and that ensure the district receives maximum value for items purchased.'"

In addition, the following Effect was stated:

"The District's handling of the competitive bidding process does not provide internal controls to ensure proper checks and balances to help prevent the potential for abuse and to achieve a quality product at a fair and reasonable price without real or apparent conflicts of interest in the solicitation, evaluation or award."

The District will address these comments. Currently, the District does have Board-adopted policies in place regarding purchasing with several

references to California Educational Code and California Public Contracting Code. As mentioned in the response under Section 1, the District followed both its own Board-adopted policies, California Public Contract Code, and best practices by purchasing off of a competitively bid State master contract.

The person responsible for conducting these processes, as well as preparing the E-rate applications for the District, is the Director of IT. This person is the most qualified, in terms of technical expertise, to understand the needs of the District in regards to telecommunications and Internet services. Because the services purchased were offered under a competitively bid State master contract, where all of the State competitive bidding requirements had been already conducted by qualified purchasing personnel at the State level, it seemed appropriate that the Director of IT could purchase these services without further involvement of the District's Purchasing Department. All of these processes were conducted with oversight by the District's Board, as documented in Board meeting minutes.

It is reasonable to assess that if the services were not purchased off of a State master contract, that it would be prudent for the District's purchasing professional to conduct the competitive bidding process with input from the Director of IT. As a result of this examination, there has been an opportunity for the Purchasing Department to better understand its role in the procurement of services receiving discounts under the E-rate program. As mentioned in the exit conference, the Purchasing Director will be consulting with other purchasing professionals within the county to formalize "Best Practices" in the purchase of E-rate services in order to ensure the District continues to meet State, local, and FCC guidelines.

TCBA
Evaluation

We do not agree with the District's opinion that telecommunications services are not subject to the competitive bidding requirements outlined in the California Public Contract Code. Sections 20110 through 20118.4 of the code apply to contracts awarded by school districts. Section 20111 discusses types of contracts and specifically mentions contracts involving an expenditure of \$50,000 or more for the purchase of equipment, materials, supplies, services (except construction services), and certain repairs. These sections of the code do not exclude telecommunications services. Regarding Section 20118 of the California Public Contract Code cited by the District to support the contention there is no need to advertise for bids, this section specifically applies to personal property and not to telecommunications services.

The District states that it has Board-adopted policies in place regarding purchasing, with several references to California Educational Code and California Public Contracting Code, and that the District followed both its own Board-adopted policies, California Public Contract Code, and best practices for purchases. We recognize that the Board has established such

policies, and the District's Purchasing Department did have a document containing the Board policies and state codes. However, the District did not go beyond these policies and codes and establish a written procurement manual or other document describing specific procurement procedures to be followed. Such a document can help ensure that District procurement officials comply with all applicable Board policies and state codes for contract procurements.

We recognize that the District's Director of IT has technical expertise that is valuable to decisions regarding telecommunications and Internet purchases. We do not intend to suggest that the Director should not be involved in the procurement process. However, we believe that the additional involvement of the Purchasing Department would establish an internal control and provide checks and balances to help prevent the potential for abuse and to achieve a quality product at a fair and reasonable price without real or apparent conflicts of interest in the solicitation, evaluation, or award.

THOMPSON, COBB, BAZILIO & ASSOCIATES, PC
Certified Public Accountants and Management, Systems, and Financial Consultants

■ Main Office:

1101 15th Street, N.W.
Suite 400
Washington, DC 20005
(202) 737-3300
(202) 737-2684 Fax

□ Regional Office:

100 Pearl Street
14th Floor
Hartford, CT 06103
(860) 249-7246
(860) 275-6504 Fax

□ Regional Office:

21250 Hawthorne Boulevard
Suite 500
Torrance, CA 90503
(310) 792-7001
(310) 792-7004 Fax

Lake Elsinore Unified School District
545 Chaney Street
Lake Elsinore, CA 92530
Attn: Dr. Frank W. Passarella- Superintendent
Mr. J.R. Rea- Director, IT Services

We have examined Lake Elsinore Unified School District's (the District), Beneficiary Number 143749, compliance with the Federal Communications Commission's 47 C.F.R. Part 54 Rules and Related Orders relative to disbursements of \$455,067.33 from the Universal Service Fund during the fiscal year ended June 30, 2008, for telecommunications services and Internet access and relative to its application and service provider selection processes for Funding Years 2006 and 2007. In planning and performing our examination, we considered internal controls in order to determine our examination procedures for the purpose of expressing our opinion on management's compliance. An examination does not include examining the effectiveness of internal controls and does not provide assurance on internal controls. We have not considered internal controls since the date of our report.

During our examination, we noted certain matters involving internal controls and immaterial noncompliance with Schools and Libraries Support Mechanism (SLSM) requirements that are presented for your consideration. These comments and recommendations, all of which have been discussed with the appropriate members of management, are intended to improve internal controls or result in improved compliance with SLSM requirements.

Comment No. **SL2008BE337_C01**

✱ **District Incorrectly Determined Urban/Rural Locations for FY 2006 and FY 2007**

Assertion B.8. The School/District accurately applied the approved discount matrix, with the correct consideration of urban or rural location, to its determined level of poverty to set its discount rate to be applied to eligible goods and/or services.

Condition For FRNs 1423335 and 1423456 on FCC Form 471 #513324 for Funding Year 2006, Block 4 of Form 471 reported an incorrect determination of the urban or rural classification for six schools when compared to census

data. Likewise, for FRNs 1563982 and 1564329 on FCC Form 471 #566516 for Funding Year 2007, Block 4 of FCC Form 471 reported an incorrect determination of the urban or rural classification for the same six schools when compared to census data. These errors resulted in the District reporting a 67 percent shared discount rate on the FCC Form 471 for each year. However, the District should have reported a 68 percent shared discount rate for both Funding Year 2006 and Funding Year 2007.

Criteria Section 54.505(c) of 47 C.F.R of the FCC Rules and Regulations and Related Orders requires that discounts to eligible schools for eligible services provided by eligible providers shall be based on the school's level of poverty and whether the school is located in an urban or rural area.

Cause A Lake Elsinore Unified School District official attributed the errors made in Block 4 on FCC Forms 471 for Funding Years 2006 and 2007 to clerical errors when entering the information from census data.

Effect If the discount amount had been calculated using the appropriate urban and rural determinations, Lake Elsinore Unified School District could have requested the following additional reimbursements from USAC:

- FRN 1423335 \$805.97
- FRN 1423456 \$333.48
- FRN 1563982 \$5,474.36
- FRN 1564329 \$64.88

Recommendation We recommend that the Lake Elsinore Unified School District review all FCC Form 471 applications prior to submission to ensure that the urban or rural school classification used in determining the discount rate is accurately reflected.

**Beneficiary
Response**

The Lake Elsinore Unified School District desires to apply the correct consideration of urban or rural location to its Block 4 matrix in order to obtain an accurate discount percentage.

It should be noted that the District serves students in Lake Elsinore and surrounding communities located within Riverside County, California. This region has experienced rapid growth within the past 10 years. Due to this fact, in some instances, the physical addresses where some of the District's newer schools are located do not show up in the Census Tract database. In fact, to verify the urban/rural designation for some of the schools examined, the auditors had to download the most recent U.S. Census maps, estimate the location of the school, and physically visit the school to determine where it fell in relation to the map.

The District's geographic boundaries encompass both rural and urban designations within a rather modest geographic region, a fairly unusual circumstance. This makes the process of designating urban and rural schools counter-intuitive since it could just be a matter of crossing a street for a school to go from an urban to a rural designation.

In the future, the District will ensure procedures are in place to verify the accurate urban and/or rural designation of the entities on the Block 4. This process will be verified on an annual basis and documentation retained to support how the entities were designated as urban or rural.

Comment No.

SL2008BE337_C02

District Did Not Reconcile Providers' Bills and USAC Support

Assertion

D.1. The School/District applied its discount percentage to the appropriate pre-discount price.

D.6. The School/District paid all "non-discount" portions of requested goods and/or services.

Condition



For FRNs 1423335 and 1423456 on FCC Form 471 #513324 for Funding Year 2006 and for FRNs 1563982 and 1564329 on FCC Form 471 #566516 for Funding Year 2007, the Lake Elsinore Unified School District did not receive copies of documentation used by its service providers to calculate the amounts of USAC reimbursement requested via FCC Form 474 and did not reconcile the service providers' bills to this supporting documentation. The District relied on the service providers to accurately determine the discounted and non-discounted portions of services purchased, and the District simply paid the amounts stated on the bills as due, which sometimes had a credit balance.

For FRNs 1423335 and 1563982, our review of a sample of telephone bills showed that it is unclear whether the telecommunications service provider accurately calculated discounts using the correct billed amounts for certain telephone numbers. In one instance, the billing charge for one telephone number totaled \$20,649.64, but the service provider used a billed amount of \$12,261.95 to calculate the discount. The reason for the difference is not clear. For example, the service provider may have made an error or an unusually high percentage of ineligible fees and charges may have been excluded from the amount to which the discount was applied. In addition, for FRN 1563982, the service provider included some telephone numbers in its calculation of the total discount that were not on the service provider's bills sent to the District.

Criteria

Section 54.505(a) of 47 C.F.R of the FCC Rules and Regulations and Related Orders requires that discounts for eligible schools shall be set as a percentage discount from the pre-discount price. Section 54.523 of 47 C.F.R of the FCC Rules and Regulations and Related Orders requires beneficiaries to pay the non-discount portion of services or products purchased with universal service discounts.

Reconciling USAC discounts for telecommunications and Internet access services to the service providers' bills is an effective internal control to help ensure that discounts are calculated accurately and that the District pays the correct non-discount portion of the bills and does not pay more for these services than is necessary. According to a list of "Best Practices" prepared by USAC to help applicants and service providers comply with program rules, the submitter of an invoice to USAC's Schools and Libraries Division (SLD) should (1) maintain an analysis relating the SLD invoice (using the invoice number on FCC Form 474) to the invoice numbers of the customer bills, and (2) maintain copies of customer bills and invoices submitted to SLD to facilitate any requested reconciliation.

Cause

We requested explanations by the service provider for the apparent discrepancies between the billing charges and the discount calculations for FRNs 1423335 and 1563982. However, the service provider did not respond with a clarification of the differences we noted.

The Lake Elsinore Unified School District did not implement internal controls to review its telecommunications and Internet access service providers' calculations of the discounted and non-discounted portions of services purchased to ensure that the District received the correct USAC reimbursement and paid the appropriate non-discount portion of its providers' bills.

Effect

For FRNs 1423335 and 1563982, because it is unclear whether the telecommunications service provider accurately calculated discounts using the correct billed amounts for certain telephone numbers, we were unable to determine whether (1) the discount percentage was applied to the appropriate pre-discount price and (2) the District paid all "non-discount" portions of the requested services.

In addition, the Lake Elsinore Unified School District did not know whether its service providers appropriately and accurately calculated discounts for eligible telecommunications and Internet access services. Further, the District did not know whether it paid its service providers the appropriate "non-discount" portions of the telecommunications and Internet access services.

Recommendation

We recommend that the Lake Elsinore Unified School District improve its internal controls over payments to service providers for

telecommunications and Internet access services by (1) requesting copies of the documentation used by the service providers to calculate the amounts of reimbursement requested on the FCC Forms 474 that the service providers submit to the Universal Service Administrative Company and (2) reconciling this supporting documentation to the bills for telecommunications and Internet access services that the District receives from the service providers.

**Beneficiary
Response**

The Lake Elsinore Unified School District is committed to paying its share of costs, in conjunction with contribution from the California Teleconnect Fund, to ensure that it is compliant with FCC rules in regards to paying the appropriate non-discounted share. The District is also very interested in ensuring that it receives discounts only on eligible services and that it receives the correct amount of discounts for every funding request.

The matter of reconciling eligible costs to disbursements made via the Service Provider Invoice (SPI) process is no simple task, as evidenced by the difficulty the auditors had in this portion of their examination. In the case of the disbursements being examined, the auditors had a further challenge in that they were not reconciling an entire year's worth of invoices and disbursements. Rather, they were looking at a subset of beneficiary invoices and SPI forms. Trying to reconcile invoicing line by line, and month by month, is truly a very difficult to impossible task.

Prior to the examination, the District hired a consultant to prepare invoice reconciliations and the "Attachment G" as requested by the auditors. The consultant reviewed all service provider invoices line by line and prepared reconciliations for the entire 12 month period associated with Funding Years 2006 and 2007. Based upon actual invoice copies, the consultant calculated the total amount due, the charges eligible for E-rate discount, the charges ineligible for E-rate discount, and the payments made. These reconciliation worksheets were provided to the auditors. Below is a table summarizing what was calculated by FRN.

	FRN 1423335	FRN 1423456	FRN 1563982	FRN 1564329
Charges:				
Total Service Provider Bill Amount for 12 months	\$675,039.99	\$33,389.69	\$647,565.31	\$8,636.46
Ineligible charges based upon phone bill analysis	\$2,131.53	\$0.00	\$2,381.67	\$0.00
Charges eligible for E-rate discount based upon phone bill analysis	\$672,908.46	\$33,389.69	\$645,183.64	\$8,636.46
Disbursements:				
Beneficiary discount	67%	67%	67%	67%
Estimated 67% disbursement based on phone bill analysis eligible charges	\$450,848.67	\$22,371.09	\$432,273.04	\$5,786.43
Approved FRN amount	\$402,143.11	\$22,343.16	\$398,264.86	\$5,628.00
Actual disbursement for entire funding year	\$402,033.21	\$22,343.16	\$398,264.86	\$5,562.38
Payments:				
District Share Based Upon Total Service Provider Bill Amount	\$273,006.78	\$11,046.53	\$249,300.45	\$3,074.08
Payments made by check	\$303,980.25	\$19,717.01	\$143,176.49	\$0.00
Credits (E-rate and/or California Teleconnect Fund)	\$275,175.23	\$6,996.57	\$510,019.04	\$8,636.46

In every instance, it appears that the District's eligible charges exceeded the total approved pre-discount amount for the associated FRN. In two instances, the FRN was capped.

After a review of this summary, it is the opinion of the District that, while it appears that the District could have requested more funding on each FRN of the Block 5 of the Form 471, that it received the appropriate discounts in association to eligible charges.

One area that should and will be improved is the verification of receipt of discounts. This again is challenging due to the variation of the funding cycle in regards to the receipt of the Funding Commitment Decision Letter. In other words, it is rare that 100% of disbursements are actually received within the funding year, and there is frequently overlap of discounts from multiple funding years. This reconciliation process will

take some time to implement since it may take up to 16 to 24 months after July 1 of the start of the funding year for the District to receive its E-rate discounts.

The District would like to address the following Criteria as identified by the auditors: *"According to a list of "Best Practices" prepared by USAC to help applicants and service providers comply with program rules, the submitter of an invoice to USAC's Schools and Libraries Division (SLD) should (1) maintain an analysis relating the SLD invoice (using the invoice number on FCC Form 474) to the invoice numbers of the customer bills, and (2) maintain copies of customer bills and invoices submitted to SLD to facilitate any requested reconciliation."*

It should be noted that the "submitter" of the SLD invoice in the case of the SPI form is the service provider, and not the beneficiary. The District would also like to respectfully highlight several additional obstacles to beneficiaries in performing the types of reconciliations proposed:

- 1) No detailed reports regarding the submitted SPI forms are available from the service provider unless there is an audit.
- 2) Even when the reports were provided, they were not very clear and there appeared to be many discrepancies between the SPI forms submitted and the discounts posted.
- 3) There are limited staff resources at both the service providers and the District. To prepare reports and reconciliations on a monthly, or even a quarterly basis, would be difficult and perhaps impossible especially if the service provider cannot provide the information requested.
- 4) Even if the District were to prepare a reconciliation on its own, based upon analysis of its own invoices/phone bills, it is very possible that the amounts may never reconcile to the SPI forms due to "hidden" ineligible costs that are bundled into monthly service charges. These costs do not appear as separate line items on the phone bill.
- 5) There is currently no process in place should a beneficiary dispute a SPI. If the beneficiary determines it has received too much, it is certainly possible to return funds to USAC. However, if a beneficiary receives too little, and disputes the service provider's calculations, there is no guarantee (and it is also highly unlikely), that the service provider would modify its SPI unless there was a gross discrepancy.

There does not appear to be a perfect solution on the horizon in regards to accomplishing this task. However, the District will make every effort to comply with the FCC's documentation retention requirements and to reconcile, as best in can in the conditions stated above, its invoices with the SPI forms.

**TCBA
Evaluation**

Because the District did not reconcile service providers' bills to documentation used by the service providers in calculating USAC reimbursement amounts, simply paid the amounts stated on the bills as due, and did not verify the receipt of all E-Rate discounts, the District cannot know whether or not it received the appropriate discounts from the providers. We realize that the "submitter" of the SLD invoices in the case of the SPI form is the service provider and not the beneficiary, but we believe it is in the District's best interest to request copies of the documentation used by the service providers to calculate the reimbursement amounts requested on the FCC Forms 474 that the service providers submit to USAC and then reconcile this supporting documentation to the service providers' bills for telecommunications and Internet access services, as we state in our recommendation.

Our examination procedures are designed primarily to enable us to form an opinion on management's compliance with the applicable requirements of the SLSM and, therefore, may not bring to light all weaknesses in policies or procedures that may exist. We aim, however, to use our knowledge of the Lake Elsinore Unified School District gained during our work to make comments and suggestions that we hope will be useful to you.

We would be pleased to discuss these comments and recommendations with you at any time. This report is intended solely for the information and use of Lake Elsinore Unified School District management and others within the organization, the Universal Service Administrative Company, and the Federal Communications Commission and is not intended to be, and should not be, used by anyone other than these specified parties.

Thompson, Cobb, Bazilio & Associates, P.C.

Washington, DC
May 12, 2009



Universal Service Administrative Company

USAC Management Response

Date: January 28, 2010

Subject: Federal Communications Commission, Office of Inspector General, Universal Service Fund (FCC OIG USF) Audit of the Schools & Libraries Program at Lake Elsinore Unified School District

USAC management has reviewed the FCC OIG USF Audit of the Lake Elsinore Unified School District. Our response to the audit is as follows:

Finding ID: SL2008BE337_F01

Finding/Comment Narrative:

For FRNs 1423335 and 1423456 on FCC Form 471 #513324 for Funding Year 2006 and for FRNs 1563982 and 1564329 on FCC Form 471 #566516 for Funding Year 2007, the Lake Elsinore Unified School District's procurement of telecommunications services and Internet access, including receiving bids and selecting the service providers, was carried out solely by the Director of Information Technology (IT) Services, who also played a lead role in developing and implementing the District's Technology Plan and is responsible for managing the District's technology resources and supporting its technology users. The Director of IT carried out the procurement process without a written procurement manual or other document describing procurement policies and procedures to be followed. Requests for Proposals (RFP) were posted on the District website.

Management Comment:

USAC will reach out to the Beneficiary, affording it the opportunity to substantiate its claim that it complied with state procurement requirements. USAC will then review the information provided to determine if recovery is warranted. USAC management concurs with the finding and recommendation.

Finding ID: SL2008BE337_C01

Finding/Comment Narrative:

For FRNs 1423335 and 1423456 on FCC Form 471 #513324 for Funding Year 2006, Block 4 of Form 471 reported an incorrect determination of the urban or rural classification for six schools when compared to census data. Likewise, for FRNs 1563982 and 1564329 on FCC Form 471 #566516 for Funding Year 2007, Block 4 of FCC Form 471 reported an incorrect determination of the urban or rural classification for the same six schools when compared to census data. These errors resulted in the District reporting a 67 percent shared discount rate on the FCC Form 471 for each year. However, the District should have reported a 68 percent shared discount rate for both Funding Year 2006 and Funding Year 2007.

Management Comment:

Going forward, the applicant should reference FCC rule 47 C.F.R. §54.505, which discusses how an applicant must calculate its discount percentage. Further guidance can also be found in the instructions to the FCC Form 471 and on USAC's website. USAC management concurs with the comment, effect, and recommendation.

Finding ID: SL2008BE337_C02

Finding/Comment Narrative:

For FRNs 1423335 and 1423456 on FCC Form 471 #513324 for Funding Year 2006 and for FRNs 1563982 and 1564329 on FCC Form 471 #566516 for Funding Year 2007, the Lake Elsinore Unified School District did not receive copies of documentation used by its service providers to calculate the amounts of USAC reimbursement requested via FCC Form 474 and did not reconcile the service providers' bills to this supporting documentation. The District relied on the service providers to accurately determine the discounted and non-discounted portions of services purchased, and the District simply paid the amounts stated on the bills as due (the bills sometimes had a credit balance).

Management Comment:

USAC will reach out to the service provider, affording it the opportunity to substantiate its Form 474 submissions. If the Form 474 submissions can not be substantiated, USAC will seek recovery pursuant to FCC Rules and Orders. USAC management concurs with the comment and recommendation.

This concludes the USAC management response to the audit.

Exhibit H

Cathy Benham

From: Wayne Scott <wscott@usac.org>
Sent: Sunday, April 19, 2009 8:09 AM
To: Kim Friends
Cc: Cyndi Beach; Cathy Benham
Subject: RE: Findings

Kim – You are correct. “best practices” should not be stated as criteria for audit findings. I will forward on to my group to respond to TCBA.

Wayne

From: Kim Friends [mailto:kfriends@csmgconsulting.com]
Sent: Friday, April 17, 2009 3:17 PM
To: Wayne Scott
Cc: Cyndi Beach; 'Cathy Benham'
Subject: Findings
Importance: High

Hi Wayne and Cyndi,

Tried to call you both, but you were out (it is Friday afternoon, after all) so I wanted to send you along a copy of some troubling findings with my two cents added in.

It is not the findings that are troubling, we can address those – our concern is the structure of the document that has been submitted to us by TCBA. In fact, we are struggling with our beneficiary response to some degree because we are not sure how to address criteria and/or violations of items that are not ‘rules’... I have put Cathy on hold as to whether we need to modify our response(s) with some of the suggestions I have made until perhaps we have a discussion.

Can you please take a quick peek and let me know if I am WAY off base with my concerns over the statements regarding ‘Criteria’ throughout?

I can make myself available for a call first thing Monday morning (early – 6 – 7am PST is fine with me) or Tuesday most of the day...

Or just send me an email tell me that I am way off the mark and I should just leave it alone... ☺

~Kim

Kimberly Friends
Vice-President, E-Rate Services
CSM Consulting, Inc.
909.944.7798 O
909.481.7410 F
909.972.5355 M

Exhibit I

Draft Issues
Lake Elsinore Unified School District (SL2008BE337)

Issue No.	SL2008BE337_01 District Incorrectly Determined Urban/Rural Locations for FY 2006 and FY 2007
Assertion	B.8. The Lake Elsinore Unified School District accurately applied the approved discount matrix, with the correct consideration of urban or rural location, to its determined level of poverty to set its discount rate to be applied to eligible goods and/or services.
Condition	For audited FRNs 1423335 and 1423456 on FCC Form 471 #513324 for Funding Year 2006, which had total USAC disbursements of \$76,224.20 in the Fiscal Year ended June 30, 2008, Block 4 of Form 471 reported an incorrect determination of the urban or rural locations for six schools when compared to census data. Likewise, for audited FRNs 1563982 and 1564329 on FCC Form 471 #566516 for Funding Year 2007, which had total USAC disbursements of \$370,904.15 in the fiscal year ended June 30, 2008, Block 4 of FCC Form 471 reported an incorrect determination of the urban or rural locations for six schools when compared to census data. These errors resulted in the District reporting a 67 percent shared discount rate on the FCC Form 471 for each year. However, the District should have reported a 68 percent shared discount rate for both Funding Year 2006 and Funding Year 2007.
Criteria	Section 54.505(c) of 47 C.F.R of the FCC Rules and Regulations and Related Orders require that discounts to eligible schools for eligible services provided by eligible providers shall be based on the school's level of poverty and whether the school is located in an urban or rural area.
Cause	A Lake Elsinore Unified School District official attributed the errors made in Block 4 on FCC Forms 471 for Funding Years 2006 and 2007 to clerical errors when entering the information from census data.
Effect	If the discount amount had been accurately calculated using the appropriate urban and rural determinations, Lake Elsinore Unified

School District could have requested the following additional reimbursements from USAC.

- FRN 1423335 \$805.97
- FRN 1423456 \$333.48
- FRN 1563982 \$5,474.36
- FRN 1564329 \$64.88

Recommendation We recommend that the Lake Elsinore Unified School District review all FCC Form 471 applications prior to submission to ensure that the urban or rural school location used in determining the discount rate is accurately reflected.

**Beneficiary
Response**

Issue No. **SL2008BE337_02**
District Did Not Comply with All State and Local Procurement Policies

Assertion C.1. The Lake Elsinore Unified School District made a request for competitive bids for all eligible goods and/or services for which Universal Service Fund support was requested and complied with applicable state and local procurement processes included in its documented policies and procedures.

Condition Pertaining to audited FRNs, which had USAC disbursements in the Fiscal Year ended June 30, 2008:

- 1) #1423335 on FCC Form 471 #513324 for Funding Year 2006, of \$53,881.04;
- 2) #1423456 on FCC Form 471 #513324 for Funding Year 2006, of \$22,343.16;
- 3) #1563982 on FCC Form 471 #566516 for Funding Year 2007, of \$366,556.97;
- 4) #1564329 on FCC Form 471 #566516 for Funding Year 2007, of \$4,347.18.

The Lake Elsinore Unified School District's procurement of telecommunications services and Internet access for Funding Years 2006 and 2007, including receiving bids and selecting the service

providers, was carried out solely by the Director of Information Technology (IT) Services, who also played a lead role in developing and implementing the District's Technology Plan and is responsible for managing the District's technology resources and supporting its technology users. The Director of IT carried out the procurement process without a written procurement manual or other document describing procurement policies and procedures to be followed. Requests for Proposals (RFP) were posted on the District website.

Criteria

Section 54.504(a) of 47 C.F.R. of the FCC Rules and Regulations and Related Orders requires that eligible schools seek competitive bids and states that state and local competitive bid requirements apply for all eligible services.

USAC's Best Practices for the Schools and Libraries Program are designed to assist beneficiaries in complying with program rules. USAC encourages all program participants to review the Best Practices document and implement the recommended practices. In a section entitled Competitive Bidding Issues, USAC recommends that beneficiaries follow state and local procurement laws and regulations and maintain documentation of compliance with these requirements.

Lake Elsinore Board of Education policy (BP 3300) states that "the Superintendent or designee shall develop and maintain effective purchasing procedures that are consistent with sound financial controls and that ensure the district receives maximum value for items purchased."

The Federal Transit Administration's (United States Department of Transportation) Best Practices Procurement Manual provides comprehensive guidance regarding competitive bidding based on the Federal acquisition process, Comptroller General decisions, and "Best Practices" of grantees and others. This comprehensive manual is consistent with best practices for procurement that we have observed in many public agencies. The manual's subchapter 2.1.2, Autonomy, states that autonomy of the procurement function, or its independence from internal customers, is important to carrying out procurement responsibilities without undue influence by the customers and users of the goods and services procured. While the degree of autonomy and organizational reporting relationships will vary with the size of the organization and its policies, autonomy enables procurement personnel to give unbiased consideration to procurement principles and requirements, as well as to the schedule, budget, functional and

other requirements of the internal customers...Some degree of autonomy of the procurement function is necessary organizationally and functionally so that procurement personnel will be free from undue influence or pressure in the award and administration of contracts...Overall, procurement personnel should have enough autonomy or checks and balances to achieve a quality product at a fair and reasonable price without real or apparent conflicts of interest in the solicitation, evaluation or award.

Maintaining written procurement policies and procedures is good for internal control and can provide assurance that the District complies with state and local laws and regulations. Further, well-documented procurement policies and procedures promote economy and efficiency of operations and demonstrate the District's ability to manage and maintain a competitive bidding process that complies with statutory and funding regulations and procedures as well as best practices.

Section 20112 of the California Public Contract Code requires that school districts, for the purposes of securing bids, "shall publish at least once a week for two weeks in some newspaper of general circulation published in the district...a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place and the website where bids will be opened."

Cause

The Director of IT said that although the District has a Purchasing section, he handled the procurement process because resources within the District are scarce and he is considered as the most qualified person to determine the District's telecommunications and Internet needs. The District believed that the Director was qualified to perform the procurement process and did not believe additional staff was necessary. The Lake Elsinore Unified School District did not have written procurement policies and procedures providing instruction to District officials in carrying out the competitive bidding process.

The Lake Elsinore Unified School District posted the RFPs on their District website instead of advertising the RFPs in a local newspaper. According to the District's Director of IT, the District did not believe its purchase of telecommunications and Internet access services was subject to the California Public Contract Code requirements because these services may be considered as a utility and not subject to this code. Based on our audit work, the District's consultant attempted to clarify this matter with California

Department of Education officials. According to the consultant, her inquiries led to discussions among California Department of Education officials and others in an effort to determine whether purchases of E-Rate services by school districts in California are subject to the state's Public Contract Code. The consultant said there was no official position on this issue, and that the general consensus of the state officials was that there does not seem to be specific language in state law regarding school districts' purchase of telecommunications services. She noted that the state officials may seek guidance on this issue from USAC and possibly the FCC.

Effect

The District did not use adequate internal controls in carrying out the procurement of E-Rate services. The District's procurement of telecommunications services and Internet access was carried out solely by the Director of IT, who was not independent of the internal customers or users of the District's technology services. The District's handling of the competitive bidding process was not consistent with Best Practices and does not provide internal controls to ensure proper checks and balances to help prevent the potential for abuse and to achieve a quality product at a fair and reasonable price without real or apparent conflicts of interest in the solicitation, evaluation or award.

The lack of written policies and procedures for competitive bidding may weaken internal control, thereby allowing errors to occur undetected in carrying out the process, including not complying with state and local procurement laws and regulations. The lack of written policies and procedures may also cause confusion regarding the proper operation of the competitive bidding process, accountability, or assigned responsibilities. It is also inconsistent with the Lake Elsinore Board of Education policy requiring the establishment of effective purchasing procedures that are consistent with sound financial controls.

In addition, the Lake Elsinore Unified School District did not comply with all California procurement requirements. The District did not call for bids for telecommunications services and Internet access by advertising its RFPs in a local newspaper at least once a week for 2 weeks, as required by the California Public Contract Code. This may have contributed to the District receiving only one bid each year for their RFPs.

The potential monetary effect is yet to be determined.

Recommendation We recommend that the Lake Elsinore Unified School District establish a competitive bidding process for E-Rate program services that does not rely solely on one individual (e.g., the Director of IT) to carry it out. The District should implement checks and balances for the procurement process, such as the involvement of more than one individual, particularly to evaluate bids and select providers. Implementing such checks and balances will help ensure that internal controls are utilized to achieve autonomy of the procurement function and help achieve quality services at a fair and reasonable price without real or apparent conflicts of interest in the solicitation, evaluation, or award. This will also help ensure that the District complies with the Board of Education policy requiring the establishment of effective purchasing procedures that are consistent with sound financial controls and that ensure the district receives maximum value for items purchased.

In addition, we recommend that the Lake Elsinore Unified School District develop written policies and procedures for the competitive bidding process. Such a document can strengthen internal control and familiarize staff with required procurement procedures, providing a clear and common understanding of goals, benefits, and policies, as well District expectations regarding performance and conduct. Written procurement policies and procedures will also help ensure compliance with the Board of Education policy requiring the establishment of effective purchasing procedures that are consistent with sound financial controls and that ensure the district receives maximum value for items purchased.

We also recommend that the Lake Elsinore Unified School District comply with all California procurement policies by advertising for bids in a local newspaper at least once a week for two weeks when seeking competitive bids for providing E-Rate services.

**Beneficiary
Response**

Issue No.

SL2008BE337_03

Lack of Documentation Prevents Determination of Compliance with Provider Selection Requirements

Assertion

C.3. The Lake Elsinore Unified School District considered all bids submitted and selected the most cost-effective service offering, with price being the primary factor considered.

A.2. The Lake Elsinore Unified School District retained, to date, all documents related to the application for, receipt and delivery of discounted telecommunications and other supported services. Also, any other document that demonstrated compliance with the statutory or regulatory requirements for the schools and libraries mechanism was retained.

Condition

Pertaining to audited FRNs, which had USAC disbursements in the Fiscal Year ended June 30, 2008:

- 1) #1423335 on FCC Form 471 #513324 for Funding Year 2006, of \$53,881.04;
- 2) #1423456 on FCC Form 471 #513324 for Funding Year 2006, of \$22,343.16;
- 3) #1563982 on FCC Form 471 #566516 for Funding Year 2007, of \$366,556.97;
- 4) #1564329 on FCC Form 471 #566516 for Funding Year 2007, of \$4,347.18.

The Lake Elsinore Unified School District did not have documentation of the service provider evaluation and selection process for the four audited FRNs. The District's Director of Information Technology (IT) Services was only able to orally explain how and why the service providers were selected. Pacific Bell Telephone Company was the service provider for FRNs 1423335 and 1563982 for telecommunications services, Pacific Bell Internet Services was the service provider for FRN 1423456 for Internet access service, and SBC Advanced Solutions was the service provider for FRN 1564329 for Internet access service.

According to the Director of IT, the three service providers were first selected for services in Funding Year 2003. All three providers were included in one bid, which was submitted in response to a Request for Proposal (RFP) issued by the District. The service providers were selected based on an evaluation of (1) the services they offered and (2) price. In January 2003, the District signed an agreement to use the service providers under a state master contract. The District renewed the agreement in January 2004 under a multi-year state master contract which was extended through December 3, 2008.

The District continued to submit a FCC Form 470 and issue an RFP for each subsequent Funding Year, including Funding Years

2006 and 2007 for the audited FRNs. The District's Director of IT explained that this was done in order to ensure that the District met all program requirements and to test the market to determine whether the services could be obtained at a lower price. The Director of IT stated that only one bid was received for Funding Year 2006 and one bid was received for Funding Year 2007. These bids were received from SBC/AT&T for the service providers that were already providing telecommunications and Internet access services.

The District retained only the bid from Funding Year 2006. The District did not retain the bid from Funding Year 2007 and did not prepare and retain any documentation substantiating that only one bid was received each year. Also, the District did not prepare and retain any documentation explaining the process used to evaluate the bids and select the service providers.

Criteria

Sections 54.516(a)(1) and 54.504(c)(1)(x) of 47 C.F.R. of the FCC Rules and Regulations and Related Orders require that beneficiaries retain all documents related to the application for, receipt, and delivery of discounted telecommunications and other supported services for at least 5 years after the last day of service delivered in a particular Funding Year. Any other document that demonstrates compliance with the statutory or regulatory requirements shall be retained as well.

Section 54.511(a) of 47 C.F.R. of the FCC Rules and Regulation and Related Orders requires: "In selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers but price should be the primary factor considered."

The FCC's Fifth Report and Order states: "All documents used during the competitive bidding process must be retained." It further states: "Beneficiaries must retain documents such as...documents related to the selection of service provider(s)."

The USAC guidance "Best Practices" is designed to assist applicants in complying with program rules. Concerning competitive bidding issues, this guidance encourages applicants to "...maintain documentation of the process and any related analysis

leading to the selection of the winning bid; including selection criteria and the weighting of those criteria.”

The USAC website states that for bid evaluation, “Applicants must construct an evaluation for consideration of bids received in response to the posting of the Form 470 that makes price the primary factor in the selection of a vendor.”

USAC has started recommending that, in circumstances such as when an applicant files a FCC Form 470 and considers a state master contract as a bid but the applicant does not receive any other bids, the applicant document the situation in a memo, or email, to themselves so that an audit trail is established. Such documentation will allow auditors to more completely assess a beneficiary’s compliance with program requirements.

The USAC website link also states that for document retention “Applicants must save all documentation pertaining to the competitive bidding process and vendor selection for five years. Applicants must certify and acknowledge on the Form 470 and the *Services Ordered and Certification Form* (Form 471) that they may be audited and that they must retain all records that can verify the accuracy of information.”

Cause

The Lake Elsinore Unified School District’s Director of IT explained that he did not think that retaining procurement documentation was necessary since the District had decided to continue services with the same providers with a multi-year commitment (Authorization to Order) using a state master contract. The Director of IT also said that, at the time of these procurements, there was little guidance from USAC regarding the documentation requirements for service provider bids received and for when no or few bids are received.

Effect

With no documentation showing how the service providers were evaluated and selected, we were unable to determine whether the District complied with program requirements for the consideration of bids submitted and the selection of the most cost-effective service offering. In addition, with no documented bids received other than one bid for the selected service providers, the potential monetary effect could not be determined.

Recommendation

We recommend that the Lake Elsinore Unified School District comply with FCC Rules and Regulations and Related Orders and retain all documents that demonstrate compliance with requirements, including documents related to the application for,

receipt, and delivery of discounted telecommunications and other supported services, for at least 5 years after the last day of service delivered in a particular Funding Year. Such documentation should include an explanation of how service providers are selected, how it was determined that the selected service providers are the most cost-effective, and how price was the primary factor considered. This includes preparing and retaining documents explaining when a single bid or no bids are received in response to RFPs and how the District ensured that the selected service provider in such instances was the most cost-effective. Any bids received should also be retained.

**Beneficiary
Response**

Issue No.

SL2008BE337_04

District Did Not Reconcile Providers' Bills and USAC Support

Assertion

D-1. The Lake Elsinore Unified School District applied its discount percentage to the appropriate pre-discount price.

D-6. The Lake Elsinore Unified School District paid all "non-discount" portions of requested goods and/or services.

Condition

Pertaining to audited FRNs, which had USAC disbursements in the fiscal year ended June 30, 2008:

- 1) #1423335 on FCC Form 471 #513324 for Funding Year 2006, of \$53,881.04;
- 2) #1423456 on FCC Form 471 #513324 for Funding Year 2006, of \$22,343.16;
- 3) #1563982 on FCC Form 471 #566516 for Funding Year 2007, of \$366,556.97;
- 4) #1564329 on FCC Form 471 #566516 for Funding Year 2007, of \$4,347.18.

The Lake Elsinore Unified School District did not receive copies of documentation used by its service providers to calculate the amounts of USAC reimbursement requested via FCC Form 474 for telecommunications services (audited FRNs 1423335 and 1563982) and Internet access (audited FRNs 1423456 and 1564329) and did not reconcile the service providers' bills to this

supporting documentation. The District relied on the service providers to accurately determine the discounted and non-discounted portions of services purchased, and the District simply paid the amounts stated on the bills as due (the bills sometimes had a credit balance).

For FRNs 1423335 and 1563982, our review of a sample of telephone bills showed that it is unclear whether the telecommunications service provider accurately calculated discounts using the correct billed amounts for certain telephone numbers. In one instance, the billing charge for one telephone number totaled \$20,649.64, but the service provider used a billed amount of \$12,261.95 to calculate the discount. The reason for the difference is not clear. For example, the service provider may have made an error, or an unusually high percentage of ineligible fees and charges may have been excluded from the amount to which the discount was applied to. In addition, for FRN 1563982, the service provider included some telephone numbers in its calculation of the total discount that were not on the service provider's bills sent to the District.

Criteria

Section 54.505(a) of 47 C.F.R of the FCC Rules and Regulations and Related Orders requires that discounts for eligible schools shall be set as a percentage discount from the pre-discount price. Section 54.523 of 47 C.F.R of the FCC Rules and Regulations and Related Orders requires beneficiaries to pay the non-discount portion of services or products purchased with universal service discounts.

Reconciling USAC discounts for telecommunications and Internet access services to the service providers' bills is an effective internal control to help ensure that discounts are calculated accurately and that the District pays the correct non-discount portion of the bills and does not pay more for these services than is necessary. According to a list of "Best Practices" prepared by USAC to help applicants and service providers comply with program rules, the submitter of an invoice to USAC's Schools and Libraries Division (SLD) should (1) maintain an analysis relating the SLD invoice (using the invoice number on FCC Form 474) to the invoice numbers of the customer bills, and (2) maintain copies of customer bills and invoices submitted to SLD to facilitate any requested reconciliation.

Cause

We requested explanations by the service provider for the apparent discrepancies between the billing charges and the discount calculations for FRNs 1423335 and 1563982. However, the

service provider did not respond with a clarification of the differences we noted.

The Lake Elsinore Unified School District did not implement internal controls to review its telecommunications and Internet access service providers' calculations of the discounted and non-discounted portions of services purchased to ensure that the District received the correct USAC reimbursement and paid the appropriate non-discount portion of its providers' bills.

Effect

For FRNs 1423335 and 1563982, because it is unclear whether the telecommunications service provider accurately calculated discounts using the correct billed amounts for certain telephone numbers, we were unable to determine whether (1) the discount percentage was applied to the appropriate pre-discount price and (2) the District paid all "non-discount" portions of the requested services. Without explanations by the service provider for the apparent discrepancies between the billing charges and the discount calculations, the potential monetary effect could not be determined.

In addition, the Lake Elsinore Unified School District did not know whether its service providers appropriately and accurately calculated discounts for eligible telecommunications and Internet access services. Further, the District did not know whether it paid its service providers the appropriate "non-discount" portions of the telecommunications and Internet access services.

Recommendation

We recommend that the Lake Elsinore Unified School District improve its internal controls over payments to service providers for telecommunications and Internet access services by (1) requesting copies of the documentation used by the service providers to calculate the amounts of reimbursement requested on the FCC Forms 474 that the service providers submit to the Universal Service Administrative Company, and (2) reconciling this supporting documentation to the bills for telecommunications and Internet access services that the District receives from the service providers.

**Beneficiary
Response**

Exhibit J

Date: September 9, 2010

Contact Name: Cathy Benham
Applicant Name: LAKE ELSINORE UNIF SCHOOL DIST, CA
Contact Phone Number: (909) 944-7798
Contact Fax Number: (909) 481-7410
Contact E-mail: cbenham@cscentral.com
Form 471 Application Number(s): 513324, 566516

Response Due Date: September 24, 2010

Time Sensitive – 15-Day Response Expected

As we discussed in our conversation, the Program Compliance team is in the process of reviewing your Funding Year 2006 and 2007 Form 471 application(s) for schools and libraries discounts to ensure that it(they) is(are) in compliance with the rules of the Universal Service program. To complete my review, I need some additional information. The information needed to complete the review is listed below.

During an audit review of FRNs 1423335 and 1423456 on FCC Form 471 #513324 for Funding Year 2006 and for FRNs 1563982 and 1564329 on FCC Form 471 #566516 for Funding Year 2007, you were unable to provide evidence that the price was the primary factor in the vendor selection process for FRN(s) 1423335, 1423456, 1563982 and 1564329. Specifically, The Lake Elsinore Unified School District's procurement of telecommunications services and Internet access was carried out without a written procurement manual or other document describing procurement policies and procedures to be followed (including; receiving bids and selecting the service providers).

FCC rules require that applicants select the most cost-effective products and/or service offering with the price being the primary factor in vendor selection process. Based on the documentation provided, USAC may rescind your funding commitment for FRN **1423335, 1423456, 1563982 and 1564329** as required by program rules. The funding commitment may be rescinded for this FRN and we may seek recovery of any improperly disbursed funds from **LAKE ELSINORE UNIF SCHOOL DIST, CA**, because price of eligible products and services was not the primary factor for vendor selection:

Form 471 Application Number(s): 513324
Commitment for FRN **1423335: \$402,143.11**
Disbursed Funds for FRN **1423335: \$402,033.21**

Commitment for FRN **1423456: \$22,343.16**
Disbursed Funds for FRN **1423456: \$22,343.16**

Form 471 Application Number(s): 566516

Commitment for FRN **1563982**: **\$398,264.86**
Disbursed Funds for FRN **1563982**: **\$398,264.86**

Commitment for FRN **1564329**: **\$5,628.00**
Disbursed Funds for FRN **1564329**: **\$5,562.38**

To continue the review, please provide the following information for each FRN under review:

BID RESPONSES

Indicate the number of bids/proposals received for those funding requests and provide complete copies of any and all proposals, bid responses, etc., received in response to the Form 470, and/or any RFP, or other solicitation in any way associated with the applicant's funding request and/or with the selection of the service provider that appears on the applicant's funding requests. Especially; for FRN **1423335**, **1423456**, **1563982** and **1564329**, please confirm the number of bids received in response to the posting of the Form 470.

VENDOR SELECTION PROCESS

Provide all documentation created during the bidding process that indicated how and why you selected the vendor. Include all bids that you received and any other bid documentation such as attendance sheets, correspondences to and from the bidding vendor and a description of your bid evaluation process.

Especially; if more than one bid was received for FRN **1423335**, **1423456**, **1563982** and **1564329**, please provide the bid evaluation sheet(s), which were created during the bid evaluation period that provides evidence of how the selected vendor was chosen.

If only one bid was received, please explain why it was in the best interest of the state not to re-solicit competitive sealed bids.

Please fax or email the requested information to my attention. If you have any questions, please feel free to contact me.

It is important that we receive all of the information requested **within 15 calendar days** so we can complete our review. **Failure to do so may result in a commitment adjustment and/or recovery of previously disbursed funds.** If recovery is needed, USAC may seek recovery of any improperly disbursed funds from **LAKE ELSINORE UNIF SCHOOL DIST, CA.**

Should you wish to cancel your Form 471 application(s), or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s), along with the Form 471 application number(s) and/or funding request number(s) and the complete name, title and signature of the authorized individual.

Thank you for your cooperation and continued support of the Universal Service Program.

Robert Herring
Program Compliance
USAC, Schools & Libraries Division
Voice: 973-581-5083
Fax: 973-599-6582
E-Mail: rherring@sl.universalservice.org

Exhibit K

Date: September 16, 2010

Contact Name: Cathy Benham
Applicant Name: LAKE ELSINORE UNIF SCHOOL DIST, CA
Contact Phone Number: (909) 944-7798
Contact Fax Number: (909) 481-7410
Contact E-mail: cbenham@cscentral.com
Form 471 Application Number(s): 513324, 566516

Response Due Date: September 24, 2010

Time Sensitive – 15-Day Response Expected

You were recently sent a written request for additional information needed by the Program Compliance team to review your Funding Year 2006 and 2007 Form 471 application(s) to ensure that it(they) is(are) in compliance with the rules of the Universal Service program. This is a reminder that the response due date is approaching. To date, none of the requested information has been received. The information needed to complete the review is listed below.

As required by program rules, USAC may need to rescind your funding commitment for FRN(s) **1423335, 1423456, 1563982 and 1564329**. FCC rules require that the applicant submits a “bona fide” request for services by conducting internal assessments of the components necessary to use effectively the discounted services they order, and a complete description of services they seek so that it may be posted for competing providers to evaluate and certify to certain criteria under penalty of perjury. The funding commitment may be rescinded for this FRN(s) **1423335, 1423456, 1563982 and 1564329** and USAC may seek recovery of any disbursed funds from the applicant because the applicant failed to competitively bid in accordance with the information and/or certifications provided on the Form 470:

Form 471 Application Number(s): 513324
Commitment for FRN **1423335: \$402,143.11**
Disbursed Funds for FRN **1423335: \$402,033.21**

Commitment for FRN **1423456: \$22,343.16**
Disbursed Funds for FRN **1423456: \$22,343.16**

Form 471 Application Number(s): 566516
Commitment for FRN **1563982: \$398,264.86**
Disbursed Funds for FRN **1563982: \$398,264.86**

Commitment for FRN **1564329: \$5,628.00**
Disbursed Funds for FRN **1564329: \$5,562.38**
For additional information on competitive bidding, please visit
<http://www.usac.org/sl/applicants/step04/>.

Please provide the following information:

1) BID RESPONSES

Indicate the number of bids/proposals received for all funding requests and provide complete copies of any and all proposals, bid responses, etc., received in response to the Form 470, and/or any RFP, or other solicitation in any way associated with the applicant's funding request and/or with the selection of the service provider that appears on the applicant's funding requests. This information should be provided for all funding requests including tariff, month-to-month and contracted services.

2) VENDOR SELECTION PROCESS

Please provide your bid evaluation matrix that was used to select your vendor. Include all bids that you received and any other bid documentation such as attendance sheets, correspondences to and from the bidding vendor and a description of your bid evaluation process. This information should be provided for all funding requests including tariff, month-to-month or contracted services.

Commitment for FRN **1564329**: **\$5,628.00**

Disbursed Funds for FRN **1564329**: **\$5,562.38**

To continue the review, please provide the following information for each FRN under review:

BID RESPONSES

Indicate the number of bids/proposals received for those funding requests and provide complete copies of any and all proposals, bid responses, etc., received in response to the Form 470, and/or any RFP, or other solicitation in any way associated with the applicant's funding request and/or with the selection of the service provider that appears on the applicant's funding requests.

Especially; for FRN **1423335, 1423456, 1563982 and 1564329**, please confirm the number of bids received in response to the posting of the Form 470.

VENDOR SELECTION PROCESS

Provide all documentation created during the bidding process that indicated how and why you selected the vendor. Include all bids that you received and any other bid documentation such as attendance sheets, correspondences to and from the bidding vendor and a description of your bid evaluation process.

Especially; if more than one bid was received for FRN **1423335, 1423456, 1563982 and 1564329**, please provide the bid evaluation sheet(s), which were created during the bid evaluation period that provides evidence of how the selected vendor was chosen.

If only one bid was received, please explain why it was in the best interest of the state not to re-solicit competitive sealed bids.

It is important that we receive all of the information requested so the Program Compliance team can complete its review. Please fax or email the requested information to my attention. If you have any questions, please feel free to contact me.

If we do not receive the requested information by September 24, 2010, your application(s) will be reviewed using the information currently on file; this may result in a commitment adjustment and/or recovery of previously disbursed funds. If recovery is needed, USAC may seek recovery of any improperly disbursed funds from LAKE ELSINORE UNIF SCHOOL DIST.

Should you wish to cancel your Form 471 application(s), or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding request(s), along with the Form 471 application number(s) and/or funding request number(s) and the complete name, title and signature of the authorized individual.

A copy of this correspondence is being forwarded to your State E-Rate Coordinator for informational purposes only.

Thank you for your cooperation and continued support of the Universal Service Program.

Robert Herring
Program Compliance
USAC, Schools & Libraries Division
Voice: 973-581-5083
Fax: 973-599-6582
E-Mail: rherring@sl.universalservice.org

Exhibit L

Cathy Benham

From: Cathy Benham <cbenham@csmcentral.com>
Sent: Wednesday, September 22, 2010 2:34 PM
To: 'rherring@sl.universalservice.org'
Cc: 'JR Rea'; 'Kim Friends'; 'pia@csmcentral.com'
Subject: FW: App (513324, 566516) Reminder Request
Attachments: Contact 1423335 Rem.doc; FY 2006 AT&T Response.pdf; FY 2006 Verizon Response.pdf; C-G FY 2006 RFP.pdf

Dear Robert,

Please see the responses to your questions, outlined below. Please let me know if you have any further questions. Thank you.

1) BID RESPONSES

Indicate the number of bids/proposals received for all funding requests and provide complete copies of any and all proposals, bid responses, etc., received in response to the Form 470, and/or any RFP, or other solicitation in any way associated with the applicant's funding request and/or with the selection of the service provider that appears on the applicant's funding requests. This information should be provided for all funding requests including tariff, month-to-month and contracted services.

2) VENDOR SELECTION PROCESS

Please provide your bid evaluation matrix that was used to select your vendor. Include all bids that you received and any other bid documentation such as attendance sheets, correspondences to and from the bidding vendor and a description of your bid evaluation process. This information should be provided for all funding requests including tariff, month-to-month or contracted services.

Commitment for FRN **1564329**: **\$5,628.00**

Disbursed Funds for FRN **1564329**: **\$5,562.38**

To continue the review, please provide the following information for each FRN under review:

BID RESPONSES

Indicate the number of bids/proposals received for those funding requests and provide complete copies of any and all proposals, bid responses, etc., received in response to the Form 470, and/or any RFP, or other solicitation in any way associated with the applicant's funding request and/or with the selection of the service provider that appears on the applicant's funding requests.

Especially; for FRN **1423335**, **1423456**, **1563982** and **1564329**, please confirm the number of bids received in response to the posting of the Form 470.

FRN 1423335: One valid response (AT&T) and one invalid response (Verizon). The Verizon response was deemed invalid as it was submitted after the RFP due date of February 3, 2006 (see attachment). The Verizon response was dated February 13, 2006 (see attachment).

FRN 1423456: One valid response (AT&T) and one invalid response (Verizon). The Verizon response was deemed invalid as it was submitted after the RFP due date of February 3, 2006 (see attachment). The Verizon response was dated February 13, 2006 (see attachment).

FRN 1563982: No responses received.

FRN 1564329: No responses received.

VENDOR SELECTION PROCESS

Provide all documentation created during the bidding process that indicated how and why you selected the vendor. Include all bids that you received and any other bid documentation such as attendance sheets, correspondences to and from the bidding vendor and a description of your bid evaluation process.

Especially; if more than one bid was received for FRN **1423335, 1423456, 1563982 and 1564329**, please provide the bid evaluation sheet(s), which were created during the bid evaluation period that provides evidence of how the selected vendor was chosen.

FRN 1423335: Vendor selection was based upon the lowest price, responsible bid (additional factors were outlined in RFP, but did not need to be applied as there was only one valid response). AT&T was selected as the sole responsible bidder.

FRN 1423456: Vendor selection was based upon the lowest price, responsible bid (additional factors were outlined in RFP, but did not need to be applied as there was only one valid response). AT&T was selected as the sole responsible bidder.

FRN 1563982: Vendor selection was based upon the lowest price, responsible bid. No responses were received; the district selected its existing provider, AT&T.

FRN 1564329: Vendor selection was based upon the lowest price, responsible bid. No responses were received; the district selected its existing provider, AT&T.

If only one bid was received, please explain why it was in the best interest of the state not to re-solicit competitive sealed bids.

AT&T provided rates and terms under the California State Master Contract, called CalNet 1. School districts, and other public agencies, are allowed under California Public Contract Code to purchase telecommunications and Internet services off this contract, which has the most competitive rates, due to the purchasing power of the State of California. This contracting vehicle is used by approximately 75% of state agencies in California. As the district felt that it was getting the best possible rates from the CalNet 1 contract, it did not feel that it was probable that any other vendor would offer more competitive rates than those of AT&T under CalNet 1 and therefore accepted AT&T's rates as reasonable and cost effective.

Cathy Benham

Manager, E-Rate Services



3130-C Inland Empire Blvd.
Ontario, CA 91764
909.944.7798 Phone
909.481.7410 FAX
909.262.5983 Mobile
cbenham@csmcentral.com
www.csmcentral.com

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Please consider the environment before printing this email.

From: ProgCompliance2 [mailto:ProgCompliance2@solixinc.com]

Sent: Thursday, September 16, 2010 6:17 AM

To: cbenham@csmcentral.com

Cc: Cathy Benham@19094817410; jvardane@cde.ca.gov

Subject: RGH: App (513324, 566516) Reminder Request

From: ProgCompliance2
Sent: Thursday, September 09, 2010 3:32 PM
To: 'cbenham@cscentral.com'
Cc: 'Cathy Benham@19094817410'
Subject: RGH: App (513324, 566516) Revised Request

Contact Name: Cathy Benham
Applicant Name: LAKE ELSINORE UNIF SCHOOL DIST, CA

Please disregard the correspondence **Sent:** Thursday, September 09, 2010 2:58 PM.
A corrected copy has been attached to this email message and fax.

Please see attached E-rate correspondence.

[Thank you for supporting the E-rate Program.](#)

Robert Herring
Program Compliance
USAC, Schools & Libraries Division
Voice: 973-581-5083
Fax: 973-599-6582
Email: rherring@sl.universalservice.org

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Tracking:

Exhibit M

Cathy Benham

From: David LeNard <dlenard@usac.org>
Sent: Monday, March 07, 2011 12:04 PM
To: Cathy Benham
Cc: kfriends@csmcentral.com; 'JR Rea'; Greg Bowers
Subject: Inquiry 22-185864 RE: COMAD/SCR Process Concern Lake Elsinore USD

Cathy,

Thank you for your inquiry to the Ombudsman group.

I have researched this issue, spoken to the responsible managers and have the following to report. The COMAD team followed the proper procedures for processing the Audit recommendations.

The FCC rule regarding “a written procurement manual” is reference to the requirement to follow all FCC, state, and local procurement/competitive bidding requirements (see 47 CFR 54.504.) Your appeal should include an opinion from the California State’s Attorney that the school complied with all state and local procurement / competitive bidding requirements, citing all issues covered in the audit letter.

If you have any further questions, please feel free to contact us at ombudsman@usac.org.

Sincerely,
Dave LeNard

§ 54.504 Requests for services.

(a) *Competitive bid requirements.* Except as provided in § 54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under §§ 54.502 and 54.503. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

David LeNard
Program Manager, Ombudsman
Universal Service Administrative Company
2000 L Street, NW, Suite 200
Washington, DC 20036
202-776-0200 Phone
202-776-0080 Fax
ombudsman@usac.org
www.usac.org

From: Cathy Benham [mailto:cbenham@csmcentral.com]
Sent: Monday, February 28, 2011 6:53 AM
To: Ombudsman
Cc: kfriends@csmcentral.com; 'JR Rea'; Greg Bowers
Subject: COMAD/SCR Process Concern

Dear Bob and Dave,

I am contacting you to share a concern that I have with how it appears that Special Compliance Review is not giving applicants their due process in responding to audit findings. Attached is an audit report and USAC Management Response along with the subsequent SCR follow-up and resulting COMAD for one of our clients.

My concerns are the following:

- 1) The USAC Management Response stated that "USAC will reach out to the Beneficiary, affording it the opportunity to substantiate its claim that is complied with state procurement requirements."
- 2) The "reach out" from the Special Compliance Reviewer simply asked for documentation regarding bids received and the applicant's vendor selection process. At no time did Special Compliance Review give the applicant "the opportunity to substantiate its claim that is complied with state procurement requirements."
- 3) The language in the COMAD states "...procurement of telecommunications services and Internet Access, including receiving bids and selecting service providers, was carried out without a written procurement manual or other documents describing procurement policies and procedures to be followed and you have not substantiated the claim that you have complied with state procurement requirements."

It is very troubling that a COMAD for funding to be rescinded in full resulted from what appears to have been no attempt by SCR to address the actual audit finding. In addition, the language in the COMAD regarding the lack of "a written procurement manual" is astonishing since there is no FCC rule regarding the necessity of such.

My purpose in reaching out to you is twofold. One, I would like to discuss with you this specific case and the intent to appeal. Secondly, I would like to discuss the SCR process and what appears to be a disconnect between the intent of USAC Management and what is actually happening to applicants going through this process.

I look forward to discussing this matter with you.

Cathy Benham

Manager, E-Rate Services



3130-C Inland Empire Blvd.
Ontario, CA 91764
909.944.7798 Phone
909.481.7410 FAX
909.262.5983 Mobile
cbenham@csmcntral.com
www.csmcntral.com

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Exhibit N



100 South Jefferson Road
Whippany, New Jersey 07981

Fax: 973-599-6525

Universal Service Administration Company
Schools & Libraries Division

FAX TRANSMISSION COVER SHEET

To: JR Rea
Fax: 19512537003
Subject: tc-Lake Elsinore Unified School District app. 513324 15 day letter
From: ProgCompliance
Date: June 09, 2011
Time: 1:41:21 PM

YOU SHOULD RECEIVE 3 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL

Dear Mr. Rea:

Attached is a letter outlining the information necessary to process your appeal for form 471 applications **513324**.

The request is to respond by **June 24, 2011**. If we do not receive the information by the close of business of **June 24, 2011** your application will be reviewed using the information currently on file.

Sincerely,

Privilege and Confidentiality Notice

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Tim Curtin

Program Compliance

Schools & Libraries Division

Phone # 973-581-5038

Fax # 973-599-6525

E-mail tcurtin@sl.universalservice.org



100 South Jefferson Road
Whippany, New Jersey 07981

Fax: 973-599-6525

Universal Service Administration Company
Schools & Libraries Division

FAX TRANSMISSION COVER SHEET

To: JR Rea
Fax: 19512537003
Subject: tc-Lake Elsinore Unified School District app. 566516 15 day letter
From: ProgCompliance
Date: June 09, 2011
Time: 1:40:00 PM

YOU SHOULD RECEIVE 3 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT
RECEIVE ALL THE PAGES, PLEASE CALL

Dear Mr. Rea:

Attached is a letter outlining the information necessary to process your appeal for form 471
applications **566516**.

The request is to respond by **June 24, 2011**. If we do not receive the information by the close of
business of **June 24, 2011** your application will be reviewed using the information currently on file.

Privilege and Confidentiality Notice

The information in this telecopy is intended for the named recipients only. It may contain information that is privileged, confidential or otherwise protected from disclosure. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this telecopied material is strictly prohibited. If you have received the telecopy in error, please notify us by telephone immediately and mail the original to us at the above address. Thank you.

Sincerely,

Tim Curtin

Program Compliance

Schools & Libraries Division

Phone # 973-581-5038

Fax # 973-599-6525

E-mail tcurtin@sl.universalservice.org



Schools and Libraries Division

June 9, 2011

J. R. Rea
Lake Elsinore Unified School District
(951) 253-7025
Application Number **566516**

Response Due Date: June 24, 2011

As we discussed in our conversation, we are in the process of reviewing all Funding Year 2007 Form 471 applications to ensure that they are in compliance with the rules of the Universal Service program. I am currently in the process of reviewing your Funding Year 2007 Form 471 Application. To complete my review I need some additional information. The information needed to complete the Program Compliance Review is listed below.

For FRNs 1563982 and 1564329, please provide documentation showing that the Form 470 and RFPs for services requested in FY 2007 were posted on the District's website or some other publication of general circulation published by the District.

Please fax or email the requested information to my attention. If you have any questions or if you require a further explanation of this request, please feel free to contact me.

It is important that we receive all of the information requested **within 15 calendar days** so we can complete our review. **Failure to respond may result in a reduction or denial of funding. If you need additional time to prepare your response, please let me know as soon as possible. If you are unable to provide the requested information because your school has closed or will shortly close for summer break, let me know when you will be available to respond to these questions.**

Please advise me if the Contact Person on the application has changed from that on the original application. This change must include the Form 471 application number and be signed by the original application's Contact Person, the original application's Authorized Person or a school official (with name and title provided).

Should you wish to cancel your Form 471 applications, or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding requests. Include in any cancellation request the Form 471 application number(s) and/or funding request number(s), and the complete name, title and signature of the authorized individual.

Thank you for your cooperation and continued support of the Universal Service Program.

Tim Curtin
Program Compliance
Schools & Libraries Division
Phone: 973-581-5038
Fax: 973-599-6525
E-mail tcurtin@sl.universalservice.org



Schools and Libraries Division

June 9, 2011

J. R. Rea
Lake Elsinore Unified School District
(951) 253-7025
Application Number **513324**

Response Due Date: June 24, 2011

As we discussed in our conversation, we are in the process of reviewing all Funding Year 2006 Form 471 applications to ensure that they are in compliance with the rules of the Universal Service program. I am currently in the process of reviewing your Funding Year 2006 Form 471 Application. To complete my review I need some additional information. The information needed to complete the Program Compliance Review is listed below.

For FRNs 1423335 and 1423456, please provide documentation showing that the Form 470 and RFPs for services requested in FY 2006 were posted on the District's website or some other publication of general circulation published by the District.

Please fax or email the requested information to my attention. If you have any questions or if you require a further explanation of this request, please feel free to contact me.

It is important that we receive all of the information requested **within 15 calendar days** so we can complete our review. **Failure to respond may result in a reduction or denial of funding. If you need additional time to prepare your response, please let me know as soon as possible. If you are unable to provide the requested information because your school has closed or will shortly close for summer break, let me know when you will be available to respond to these questions.**

Please advise me if the Contact Person on the application has changed from that on the original application. This change must include the Form 471 application number and be signed by the original application's Contact Person, the original application's Authorized Person or a school official (with name and title provided).

Should you wish to cancel your Form 471 applications, or any of your individual funding requests, please clearly indicate in your response that it is your intention to cancel an application or funding requests. Include in any cancellation request the Form 471 application number(s) and/or funding request number(s), and the complete name, title and signature of the authorized individual.

Thank you for your cooperation and continued support of the Universal Service Program.

Tim Curtin
Program Compliance
Schools & Libraries Division
Phone: 973-581-5038
Fax: 973-599-6525
E-mail tcurtin@sl.universalservice.org

Exhibit O

Cathy Benham

From: JR Rea <jrrea@leusd.k12.ca.us>
Sent: Monday, June 20, 2011 10:44 AM
To: tcurtin@sl.universalservice.org
Cc: Cathy Benham
Subject: Application #513324

Importance: High

Dear Mr. Curtin,

This email is in reference to the fax received on June 6, 2011, for FRNs **1423335** and **1423456**.

As the Lake Elsinore Unified School District Erate director, I have authorized CSM, in particular **Cathy Benham** to act on the district's and my behalf. Please afford CSM and Ms. Benham the same considerations, assistance and courtesy as you do the district.

LEUSD's Erate Consultant **Cathy Benham** with CSM, will be contacting you today.

Please acknowledge receipt of this email and acknowledgement of its request.

Thank you for your support and attention to this matter.

V/R,

J. R.

*****~

J. R. Rea

Director, IT Services

Lake Elsinore USD

P: 951.253.7025

F: 951.253.7003

(no unsolicited faxes)

*****~

"The wisdom of the wise and the experience of the ages

is preserved into perpetuity by a nation's proverbs,

fables, folk sayings and quotations."

----- William Feather

Cathy Benham

From: JR Rea <jrrea@leusd.k12.ca.us>
Sent: Monday, June 20, 2011 10:45 AM
To: tcurtin@sl.universalservice.org
Cc: Cathy Benham
Subject: Application #566516

Dear Mr. Curtin,

This email is in reference to the fax received on June 6, 2011, for FRNs **1563982** and **1564329**.

As the Lake Elsinore Unified School District Erate director, I have authorized CSM, in particular **Cathy Benham** to act on the district's and my behalf. Please afford CSM and Ms. Benham the same considerations, assistance and courtesy as you do the district.

LEUSD's Erate Consultant **Cathy Benham** with CSM, will be contacting you today.

Please acknowledge receipt of this email and acknowledgement of its request.

Thank you for your support and attention to this matter.

V/R,

J. R.

J. R. Rea

Director, IT Services

Lake Elsinore USD

P: 951.253.7025

F: 951.253.7003

(no unsolicited faxes)

"The wisdom of the wise and the experience of the ages

is preserved into perpetuity by a nation's proverbs,

fables, folk sayings and quotations."

----- William Feather

Exhibit P

Cathy Benham

From: JR Rea <jrrea@leusd.k12.ca.us>
Sent: Wednesday, June 22, 2011 3:36 PM
To: Cathy Benham
Subject: FW: Application #513324

Same as last email...

Regards...J. R. Rea

From: Frank Passarella
Sent: Wednesday, June 22, 2011 3:00 PM
To: 'tcurtin@sl.universalservice.org'
Subject: Application #513324



LAKE ELSINORE UNIFIED SCHOOL DISTRICT
Office of the District Superintendent of Schools
545 Chaney Street – Lake Elsinore, California 92532
(951) 253-7005 or FAX (951) 253 -7084

Dear Mr. Curtin,

This email is in reference to the fax received on June 6, 2011, for FRNs **1423335** and **1423456**.

As the Lake Elsinore Unified School District Erate superintendent, I have authorized CSM, in particular **Cathy Benham** to act on the District's and my behalf as the district superintendent of schools.

Please afford CSM and Ms. Benham the same considerations, assistance, and courtesy as you do the school district.

LEUSD's Erate Consultant **Cathy Benham** with CSM, may be contacting to discuss these issues.

Please acknowledge receipt of my email and acknowledgement of its request in your office.

Thank you so much for your professional support and attention to this important matter.

Respectfully Yours,

Dr. Frank W. Passarella

Dr. Frank W. Passarella

District Superintendent of Schools
Lake Elsinore Unified School District
545 Chaney Street - Lake Elsinore, CA 92530
(951) 253.7005 or (951) 253.7084 FAX

frank.passarella@LEUSD.k12.ca.us



Cathy Benham

From: JR Rea <jrrea@leusd.k12.ca.us>
Sent: Wednesday, June 22, 2011 3:36 PM
To: Cathy Benham
Subject: FW: Application #566516

I didn't get a hold of Tim...only voice mail but dr p sent this

Regards...J. R. Rea

From: Frank Passarella
Sent: Wednesday, June 22, 2011 2:59 PM
To: 'tcurtin@sl.universalservice.org'
Subject: Application #566516



LAKE ELSINORE UNIFIED SCHOOL DISTRICT
Office of the District Superintendent of Schools
545 Chaney Street – Lake Elsinore, California 92532
(951) 253-7005 or FAX (951) 253 -7084

Dear Mr. Curtin,

This email is in reference to the fax received on June 6, 2011, for FRNs 1563982 and 1564329.

As the Lake Elsinore Unified School District Erate superintendent, I have authorized CSM, in particular Cathy Benham to act on the \District's and my behalf.

Please afford CSM and Ms. Benham the same considerations, assistance, and courtesy as you do the school district.

LEUSD's Erate Consultant Cathy Benham with CSM, may be contacting you today.

Please acknowledge receipt of my email and acknowledgement of its request.

Thank you for your professional support and attention to this matter.

Respectfully Yours,

Dr. Frank W. Passarella

Dr. Frank W. Passarella
District Superintendent of Schools
Lake Elsinore Unified School District

545 Chaney Street - Lake Elsinore, CA 92530

(951) 253.7005 or (951) 253.7084 FAX

frank.passarella@LEUSD.k12.ca.us



Exhibit Q

Cathy Benham

From: Cathy Benham <cbenham@cscentral.com>
Sent: Wednesday, June 22, 2011 12:04 PM
To: 'Russ Selken'; 'John Vardanega'
Cc: 'JR Rea'
Subject: Lake Elsinore USD Appeal/Program Compliance Review
Attachments: Program Compliance Follow-Up 06.09.11.pdf; LEUSD USAC Appeal TCBA Audit.pdf; LEUSD COMAD.pdf; LEUSD TCBA Auditors' Final Report & USAC Response.pdf

Importance: High

Hello Russ and John,

Per our earlier discussion, I would like to ask for the State E-Rate Coordinator to step in on this USAC appeal Program Compliance Review.

Attached are four documents:

- 1) COMAD
- 2) USAC appeal with accompanying legal counsel opinion
- 3) USAC Program Compliance letter
- 4) TCBA audit findings and USAC Management Response

I believe that you are familiar with most of the facts in this situation, but let me summarize. Lake Elsinore Unified School District ("LEUSD") had an existing ATO or contract with AT&T for phone and data services under the CalNet 1 master contract terms and conditions. LEUSD posted a Form 470 and RFP in FY 2006 and 2007 even though they already had a valid contract in place. The audit firm TCBA audited these funding requests as part of the Round 3 Attestation Examinations and their opinion was that the district did not comply with state procurement guidelines since it failed to advertise its bids in the newspaper.

The district appealed this decision, citing public contract code that allows for districts to purchase off of state master contracts without having to advertise or go to bid. The district's legal counsel further provided an opinion that LEUSD complied with state purchasing guidelines.

USAC program compliance is now reaching out to the district with the question "...please provide documentation showing that the Form 470 and RFPs for services requested in FY(2006 and 2007) were posted on the District's website or some other publication of general circulation published by the District." As these questions seem totally disconnected from the interpretation of state law provided by LEUSD and its attorneys, and further disconnected from the state law itself which in some instances requires advertising in a newspaper of general circulation (although NOT in this particular instance as argued by the attorneys), I have serious concerns that this appeal process is going down the wrong path and there should be intervention with USAC at a higher level. Of my concerns, one is it is reasonable to ask an applicant for "proof" of Form 470 and RFP posting on its website more than 5 years after the fact, and indeed what type of proof can be provided since this was an electronic posting? Another concern is that it seems that USAC is reinterpreting California law and substituting the concept of newspaper publication with "or some other publication of general circulation published by the District." The questions posed by program compliance do not seem to be relevant to the issue at hand unless USAC is making its own interpretation of California public contract code to try to make it "fit" into USAC's own interpretation of FCC rules regarding competitive bidding.

Finally, this case presents a perfect example of lack of due process afforded by USAC's procedures. The USAC Management Response to the audit firm's findings claimed that "USAC will reach out to the Beneficiary, affording it the

opportunity to substantiate that it complied with state procurement requirements. USAC will then review the information provided to determine if recovery is warranted.” Contrary to what USAC Management stated, no effort was made by USAC to reach out to the applicant to allow for it to substantiate its case. Instead, a COMAD was issued for full recovery of funds. The only opportunity that LEUSD had to address the audit findings was via the appeals process. Based upon the language in the special compliance request, there is no opportunity for meaningful dialogue since it is evident that USAC is using its own interpretation of California law.

I am aware that there are many pending USAC and FCC appeals involving California applicants and their associated competitive bidding practices. It seems like it is necessary to discuss this trend with not only USAC senior management, but FCC management as well before this situation goes out of control.

Cathy Benham

Director, E-Rate Services
CSM Consulting, Inc.



3130-C Inland Empire Blvd.
Ontario, CA 91764
909.944.7798 Phone
909.481.7410 FAX
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cbenham@csmcentral.com
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Exhibit R

Cathy Benham

From: Cathy Benham <cbenham@csmcentral.com>
Sent: Thursday, June 23, 2011 10:04 AM
To: 'tcurtin@sl.universalservice.org'
Cc: 'JR Rea'; 'Russ Selken'; 'John Vardanega'; 'pia@csmcentral.com'
Subject: Lake Elsinore Applications 566516 and 513324
Attachments: Program Compliance Follow-Up 06.09.11.pdf

Hello Tim,

Per our discussion, I have asked that the California State E-rate Coordinator contact Leslie Fullwood at USAC in regards to this Special Compliance Review information request. Upon review, we do not feel that the questions posed are appropriate in light of the information submitted in the appeal, and have concerns regarding USAC's seeming interpretation of California Public Contract Code juxtaposed to the C.F.R. and FCC Orders.

While we are working this through with USAC, I would like to request that this Special Compliance Review be placed on hold until we have an outcome from the conversation with Leslie.

Thank you for your time and consideration.

Cathy Benham

Director, E-Rate Services
CSM Consulting, Inc.



3130-C Inland Empire Blvd.
Ontario, CA 91764
909.944.7798 Phone
909.481.7410 FAX
909.262.5983 Mobile
cbenham@csmcentral.com
www.csmcentral.com

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Tracking: